

Wireless Broadband Network Agreement

THIS Wireless Broadband Network Agreement (“**Agreement**”) dated January 29, 2008 (“**Effective Date**”) is entered into by the King George County Wireless Authority and Virginia Broadband, LLC.

RECITALS

WHEREAS, on August 1, 2006, King George County (“**County**”) adopted a resolution pursuant to the Virginia Wireless Service Authorities Act (the “**Act**”) which is codified at Chapter 54.1, Title 15.2 of the Code of Virginia of 1950, as amended (the “**Virginia Code**”), and on October 24, 2006, the State Corporation Commission issued a Certificate of Incorporation, thereby formally establishing the King George County Wireless Authority (“**Authority**”); and

WHEREAS, pursuant to the Act, the Authority is a public body politic and corporate, and an instrumentality exercising public and essential governmental functions, with the purpose of providing qualifying communications services as described in Section 56-484.7:1 of the Virginia Code; and

WHEREAS, the County established the Authority in order to facilitate the creation of a Countywide network that will make it possible for residents, businesses, County government, and other public and private organizations to have access to existing and new wireless broadband technologies; and

WHEREAS, on December 21, 2006 the Authority issued a Request for Qualifications No. 48-02-06 (“**RFQ**”) for the deployment, ownership, management, and operation of the wireless broadband network described in **Exhibit D** (“**Network**”); and

WHEREAS, the objectives in establishing the Network are as follows:

- To provide reliable Wireless Broadband access to the Internet for residents and business throughout the County.
- To create and sustain a public/private business model to provide an affordable fee-based wireless broadband network.
- To support economic development, particularly the recruitment and retention of businesses that rely on broadband connectivity to the Internet.
- To develop and introduce wireless broadband technology to County government operations in order to increase productivity and enhance the quality of service delivery.
- To establish a wireless broadband network that serves the County without imposing a tax burden on the citizens of the County; and

WHEREAS, after a thorough evaluation of each written proposal, and interviews with each firm, the Authority selected Virginia Broadband, LLC, a Virginia limited liability

company (“**Contractor**”) as the most qualified of the firms that responded to the RFQ; and

WHEREAS, Contractor successfully demonstrated to the Authority its experience in designing, implementing, operating, and maintaining rural scale broadband wireless networks; and

WHEREAS, In accepting and executing the terms of this Agreement, Contractor will be operating as a wireless Internet service provider (WISP) in the County and shall be responsible for designing, implementing, and operating the Network, as well as marketing, sales, customer account billing and collections, customer service, and all other tasks related to the operation of the Network; and

WHEREAS, the Authority is duly authorized under the Act to enter into this Agreement; and

WHEREAS, this Agreement sets forth all of the terms and conditions related to the Network as agreed to by both the Authority and the Contractor.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the promises contained herein, the Parties agree as follows:

1. Term of Agreement.

The Term of this Agreement shall be for five (5) years (“**Term**”) and may upon approval of the Authority be renewed for one additional term of five (5) years (“**Renewal Term**”). The Authority shall notify Contractor in writing of any such approval no later than ninety (90) days prior to the expiration date of the Term. The Parties may modify the Agreement at any time during the Term or Renewal Term as provided in Section 44.

2. Effective Date.

This Agreement shall become effective and binding upon the authorized execution by both Parties.

3. Authority as Agent for County.

Authority warrants, and Contractor agrees based upon the Authority’s representations, that it is duly authorized by the County to act as the County’s agent for the purposes of this Agreement pursuant to the terms of the Resolution adopted by the King George County Board of Supervisors on July 17, 2007, which is attached hereto as **Exhibit B**.

3.1 Authority as Agent for Service Authority.

Authority warrants, and Contractor agrees based upon the Authority’s representations, that it is duly authorized by the King George County Service Authority (“**Service**

Authority”) to act as its agent for the purposes of this Agreement pursuant to the terms of the Resolution adopted by the Board of the King George County Service Authority on July 17, 2007, which is attached hereto as **Exhibit B(1)**.

4. Authorization to Use Public Facilities.

4.1. Attachment to Public Facilities.

For the Term of this Agreement Contractor is authorized to and solely responsible for mounting, installing, operating, repairing, upgrading, replacing, maintaining and removing Contractor’s Facilities, and providing the Services. Subject to Authority’s prior approval (individually for each Public Facility) and all applicable federal, state and local laws, regulations, and ordinances, the Authority hereby grants Contractor a non-exclusive license to use the Public Facilities as set forth herein. However, any such use is subject to current agreements that the Authority, Service Authority, or County has extended to other parties and that have been provided to Contractor on or prior to the Effective Date.

The Authority agrees to provide Contractor copies of all such agreements currently existing with other parties, and any entered into during the Term of this Agreement. The Authority also agrees to provide Contractor with operating frequencies, antennae configuration and other information necessary (except for any proprietary information), for Contractor to ensure its compliance with the non interference provisions of this Agreement. Such frequencies and other information to be set out, as provided, in **Exhibit H**.

The Parties have, as of the Effective Date, identified certain Public Facilities to be utilized in Phase I of Network deployment. This list of Public Facilities is set out in **Exhibit A** and may be amended throughout the term of this Agreement as agreed to by the Parties, and may be expanded to identify any additional Public Facilities designated as such by the Authority for Phase I or Full Build-out.

4.2. No Real Property Interest.

This Agreement does not confer any rights other than those expressly provided herein and does not authorize Contractor to occupy and use the public rights-of-way or other Public Facilities for any purposes other than as provided herein.

Contractor agrees that: (i) Contractor's rights to use Public Facilities pursuant to this Agreement do not constitute a direct or indirect ownership or leasehold interest in said Public Facilities; (ii) none of the Public Facilities that Contractor has the right to use pursuant to this Agreement are within the exclusive use or control of Contractor; and (iii) the Authority and County may impose reasonable restrictions on the installation, maintenance, or use of any of Contractor’s Facilities wherever situated consistent with this Agreement, such as restrictions necessary to accomplish public safety objectives or to preserve a historic district, site, building, or other structure.

4.3. Public Facilities Coordination Fee for Category 1 Public Facilities.

Contractor shall pay a monthly fee (“**Public Facilities Coordination Fee**” or “**Fee**”) to the Authority in exchange for the right to install or mount Contractor’s Facilities on

Category 1 Public Facilities (defined in **Exhibit A**), as provided by Section 4.1. For the initial Term of this Agreement the Fee shall be payable to the Authority on the first of each month beginning 12 months after the Effective Date in the amount of \$500 during the second year of the Term; \$1,000 during year three; \$1,500 during year four, and \$2,500 during the fifth and final year of the Term. During any Renewal Term, the Authority reserves the right to adjust the Public Facilities Coordination Fee based on prevailing market conditions, or any other factors as agreed to by the Parties at that time. To the extent the Authority is unable to obtain Suitable Assets at any or all of the locations identified as Public Facilities (**Exhibit A**), the Public Facilities Coordination Fees shall be proportionately reduced.

4.4. Contractor's Access to Category 2 Public Facilities.

When the rights to access Category 2 Public Facilities, as defined in **Exhibit A**, are obtained by the Authority for Contractor's use in the Network, then the Authority and Contractor may enter into a (sub)lease agreement for Contractor's use of such facility. For the initial Term of this Agreement, the Authority will waive any payments by Contractor for such use until the monthly fees collected by Contractor for Services it provides to Subscribers through Category 2 Public Facilities exceed Contractor's deployment, operational and maintenance costs for the facility ("**Exceeded Amounts**"). Thereafter, the Authority may either (i) declare the Category 2 Public Facilities as a Category 1 Public Facility whereby the Contractor will not pay any rents or additional amounts for such facility beyond the Public Facilities Coordination Fee that will be paid for all Category 1 Public Facilities pursuant to Section 4.3, or (ii) charge Contractor monthly rent at rates not to exceed what the Authority or County is paying for access to such facilities; provided such rental amounts shall be consistent with industry norms for similar facilities and not exceed fifty percent (50%) of the Exceeded Amounts. Contractor shall provide the Authority monthly expense and revenue reports for any facility leased pursuant to this paragraph.

Except for the provisions of Section 4.4 that are applicable only to Category 2 Public Facilities, and any other provisions where the context clearly indicates a distinction between the two types of Public Facilities, all Category 1 Public Facilities and Category 2 Public Facilities shall be treated identically in this Agreement as Public Facilities.

4.5 Quiet Enjoyment of Public Facilities.

Contractor shall be entitled to peaceably and quietly use and occupy the Public Facilities approved by the Authority during the Term and subject to the provisions of this Agreement, without molestation or interference by the Authority, Service Authority, or County, including any agent or tenant thereof. Contractor shall notify Authority of active and intended frequencies to be used so that proper notification may be provided to future and prospective tenants and users of Public Facilities and other facilities which are or may fall under Authority control. Such frequencies to be set out, as provided, in **Exhibit H** and incorporated herein.

4.6. Non Compete.

Authority warrants that as long as this Agreement is in effect, it will not develop, fund, own, authorize, contract for or operate another wireless broadband network in the County.

4.7. King George County Tower.

During the Term and any Renewal Term of this Agreement, the communications tower jointly owned by King George County and Sprint PCS (“**King George County Tower**”) which is located on the grounds of King George Middle School at 8562 Dahlgren Road in King George County, shall be considered a Public Facility.

In the event of termination of this Agreement, Contractor shall continue to have the right to access and utilize the King George County Tower, subject to the same terms, conditions and duties set out in this Agreement, for a period of one (1) year from the date of termination (“**Post-Termination Period**”). For each month that Contractor utilizes the King George County Tower during the Post-Termination Period, Contractor agrees to pay a fee to the County; such monthly fee to be established by the County upon termination shall not exceed what the County charges other tenants of its tower facilities for similar occupancy and usage.

If the Contractor desires to continue utilizing the King George County Tower beyond the Post-Termination Period, then Contractor and County may enter into negotiations for a lease agreement establishing the terms and conditions of such continued use and occupancy. The Contractor shall notify the County of its desire to enter into lease negotiations at least sixty (60) days before the end of the Post-Termination Period; however, the County may waive this condition.

5. Authority Assistance to Contractor.

Authority agrees to use reasonable efforts to assist Contractor in obtaining all necessary permissions or permits required to facilitate (i) the installation and maintenance of Contractor’s Facilities, and (ii) Contractor’s provisioning of Services requiring the use of rights-of-way that may be controlled by the Authority, Service Authority, County, or Commonwealth.

The Authority further agrees to assist Contractor in obtaining all rights, permits, and in securing favorable rooftop and tower leases and pole mounting or other agreements from third parties throughout the County as reasonably requested by Contractor for the installation, construction, and maintenance of the Network.

6. Contractor Leases with Third Parties.

Contractor shall use reasonable efforts to incorporate into leases for rooftops, towers and other facilities that Contractor utilizes to serve public safety agencies, schools, libraries, or other local government customers located in the County a term which provides for the assignment of the lease to (i) the Authority in the event of termination of this Agreement, (ii) an entity acquiring Contractor, or (iii) an entity acquiring Contractor’s Facilities in the County.

7. RESERVED

8. Contractor's Facilities; Non-Interference.

Contractor shall, at its own expense as set out further in **Exhibit C** (except for the expenses from Authority's obligations under this Agreement), install, operate, and maintain Contractor's Facilities located on Public Facilities in a good and workmanlike manner and in accordance with applicable local, state and federal laws, ordinances and regulations, including, without limitation, any applicable regulations of the FCC.

8.1 Contractor's Physical Interference. Contractor shall inspect, construct, and maintain Contractor's Facilities in a manner that will not cause unreasonable physical interference to the County or any tenants or licensees of any Public Facilities, including without limitation the operation or use of any portion of the sanitary sewers, storm sewers and drains, water mains, gas mains, poles, water towers or other Public Facilities, except to the extent contemplated by a permit or other applicable license.

8.2 Contractor's Duties. Contractor shall operate Contractor's Facilities in a manner that will not cause RF Interference to the County, public safety agencies or any tenants or licensees of Public Facilities. As a part of the Acceptance Test Plan set out in **Exhibit E**, Contractor shall conduct any tests or studies necessary to identify and avoid RF Interference. Such tests shall be conducted by Contractor on an ongoing basis as needed. The Authority reserves the right to conduct similar tests or studies at its own expense at any time, but subject to Contractor's reasonable requirements, such as time of day, or similar considerations, so as to avoid or minimize any disruption with the operation of the Network. All operations by Contractor shall be in compliance with all FCC requirements and all Applicable Law. As provided in Section 4.1, Authority is required to disclose to Contractor all County operations on Public Facilities and the existence of any agreements with third parties for the use of Public Facilities.

8.3 County's Duties. Subsequent to the installation of Contractor's Facilities, the County shall, to the extent practicable without limiting the County's ability to conduct its activities in accordance with its normal practices, attempt to avoid causing RF Interference to or physically blocking the signals of Contractor's Facilities. The Authority, Service Authority, and County, respectively, shall also inform any new tenants of Public Facilities on which Contractor's Facilities has been installed of the existence and location of such facilities, and shall obligate each new tenant to operate and install its equipment in compliance with all applicable FCC regulations, to not cause RF Interference or physical interference with Contractor's Facilities, and, if the new tenant causes RF Interference to Contractor's Facilities, to participate in the interference resolution process described in Section 8.5.

8.4 Third Party Radio Frequency Interference. Neither the County, the Service Authority, the Authority nor Contractor shall be liable to another for RF Interference caused by any third party, provided that the foregoing provisions shall not affect Contractor's rights regarding the procedure for resolving RF Interference in this Agreement. The Authority shall exercise its best efforts to assist in the resolution of any

dispute regarding RF Interference caused by the activities of any occupant of Public Facilities.

8.5 Procedure for Curing Radio Frequency Interference.

(i) Contractor attempt to cure RF Interference. In the event that Contractor's Facilities suffers from RF Interference, whatever the cause or source of such interference but subject to all other terms and conditions in this Agreement, Contractor agrees to immediately use its reasonable efforts to cure the problem causing, or identify the source of, such interference.

(ii) Aggrieved Party to notify other Party. In the event either the Contractor or the County suffers from RF Interference as a result of the actions of the other Party that is causing equipment to function outside of normal manufacturer specifications and which cannot reasonably be cured within 12 hours, then the affected party shall notify the other party of the nature of RF Interference, including any studies that demonstrate or may have been performed in connection with such RF Interference. The parties shall then meet within 24 hours of such notification, unless extended or waived by mutual agreement, and shall mutually cooperate to determine the cause of the RF Interference and agree on a method for eliminating the RF Interference, or reducing it to an acceptable level. If mutually agreed to in writing by both Parties, then such agreement to resolve RF Interference may involve revising certain terms of this Agreement, including any attachments hereto.

(iii) Waiver of certain fees and obligations. In instances where the County or one of its agencies is responsible for the RF Interference with Contractor's Facilities, if the County, or its agent, fails to meet with the Contractor, as provided above, and make reasonable efforts to eliminate the interference within 48 hours of such notification, then the Public Facilities Coordination Fee and other payments due from Contractor to Authority with respect to Contractor's Facilities affected by RF Interference shall abate until such time as the interference is cured to the satisfaction of both Parties. However, any payments due under the Project Financing Documents, **(Exhibit C)**, shall only abate to the extent provided therein.

(iv) Reduction of coverage and service level obligations. As long as Contractor complies with its duties to avoid and cure RF Interference as set out in this section, then during any period in which Contractor suffers from RF Interference caused by the County or one of its agencies, Contractor may alter or reduce the Services in a manner reasonably related to the effects of the RF Interference on Contractor's ability to provide the Services within the geographic area directly affected by the RF Interference.

(v) Contractor remedies. If RF Interference caused by the County or one of its agencies continues for a period of ten (10) days and the Parties are unable to agree on a mutually satisfactory resolution of the problem, then Contractor shall have the right in its sole discretion to terminate its obligation to provide Services to the affected portion of the Coverage Area immediately upon notice to County and Authority. In the event the

cumulative effects of all such Service terminations cause the remaining Services in the County to no longer be in Contractor's fiscal or business interests to continue as reasonably determined by Contractor, then Contractor may terminate this entire Agreement in accordance with Section 29.G. In the event Contractor chooses not to terminate its Service obligation to such affected areas, then Authority may (1) pay all expenses directly related to the relocation and/or replacement of Contractor's Facilities in order for Contractor to be able to provide Services to the affected area, or (2) terminate Contractor's obligation to provide Services to the affected area. Upon written request by the Authority, Contractor shall provide a cost estimate in advance of such a relocation of equipment.

(vi) Authority remedies. If Contractor fails to comply with its duties to avoid and cure RF Interference as set out in this section, or if RF Interference caused by the Contractor continues for a period of thirty (30) days and the Parties are unable to agree on a mutually satisfactory resolution of the problem, then such non-compliance or RF Interference shall constitute a default under Section 29, and the Authority may pursue the appropriate remedies as set out in that Section.

(vii) RF Interference and excluded areas. Upon the extended and sustained occurrence of material RF Interference in an area that cannot be remedied by either Party after commercially reasonable efforts, the Parties may mutually elect to proceed under the provisions of Section 12.3 to determine whether such area shall be designated as an Excluded Area.

9. Plans and Specifications.

Contractor shall provide the Authority with the plans and specifications for the Network prior to any installation under this Agreement, including any upgrades or enhancements; provided that the provision of such plans and specifications shall not be required for routine operations, maintenance and repairs, such as replacement of antennas to increase performance or mitigate RF Interference. The Parties shall endeavor to meet on a regular basis, as determined by the Parties, to review the status of Network deployment and services. Upon request from the Authority, Contractor shall provide monthly tower maintenance and operation log reports. Any review or comment by Authority shall in no way relieve Contractor of any duties or obligations set forth in this Agreement or limit Contractor's ability to provide the Services in accordance with Applicable Law.

Authority will notify Contractor in writing of any concern with plans or specifications and the evidence for such concern within thirty (30) calendar days of Contractor's submission of such plans or specifications. Contractor shall make reasonable efforts to address and accommodate Authority's concerns. The parties shall resolve any dispute arising under this Section as provided for in Section 29(H).

10. Inspection of Facilities.

Contractor shall comply with all applicable federal, state and local construction and engineering codes and regulations, currently in force or hereafter applicable, to the construction, operation or maintenance of the Network within the County. The Authority

shall have the right to inspect all construction or installation work performed pursuant to this Agreement and to conduct any tests it deems necessary to ensure compliance with the terms of this Agreement, including all applicable federal, state and local building and engineering codes. The Contractor shall be solely responsible for taking all steps necessary to assure compliance with applicable standards and to ensure that the Network is installed in a safe manner and pursuant to the terms of this Agreement and Applicable Law.

11. Description of Network.

See **Exhibit D** (attached).

12. Network Coverage and Implementation.

12.1 Coverage and Implementation Plan.

Contractor shall commence and complete the build-out of the Network according to the time schedule set forth in the Coverage and Implementation Plan, which is attached as **Exhibit E**. The Coverage and Implementation Plan shall include a narrative description and schedule for the phased deployment of the Network, including a suitable pilot project(s), and a Network Acceptance Test Plan as agreed to by the Parties.

12.2 Phased Coverage and Network Build-out

In the first phase (“**Phase I**”) of Network deployment, Contractor agrees to make Network Services available to a minimum of seventy percent (70%) of the Coverage Area. Such percentage requirement to be decreased, as appropriate, in proportion to the designation of any Excluded Areas as provided in Section 12.3. The Coverage Area is the 183 square miles that encompass the geographic boundaries of the County (“**Coverage Area**”).

Subject to the terms and conditions provided elsewhere in this Agreement, the Authority agrees to provide Contractor with Suitable Assets at the Category 1 Public Facilities identified in the definition of Public Facilities in **Exhibit A**. Furthermore and prior to Contractor’s efforts to obtain Suitable Assets under Section 12.3, the Authority shall first use reasonable efforts in good faith to obtain and provide Suitable Assets at the Category 2 Public Facilities locations identified in the definition of Public Facilities in **Exhibit A**. In the event the Authority is unable to provide Suitable Assets at any Category 2 Public Facilities, and the Contractor is able to obtain Suitable Assets at any such Public Facility, then such Public Facility shall no longer be considered a Public Facility for any purpose under this Agreement. The Authority is only required to designate Suitable Assets as Public Facilities if they (i) are already designated as Public Facilities in **Exhibit A**, or (ii) are necessary, as reasonably determined by the Parties, to geographically and operationally replace, modify, expand or consolidate a designated Public Facility.

The Parties agree to make their best efforts to achieve ninety-five (95%) coverage, subject to the provisions of Section 12.3, in the County by the end of the initial five (5) year term of this Agreement (“**Full Build-out**”). The Project Financing Documents (**Exhibit C**) set out the terms and conditions of the financing arrangement between the

Authority and Contractor for Phase I. To the extent that the financing of the capital infrastructure, including Network equipment and other facilities, needed to achieve Full Build-out is not addressed in this Agreement or any exhibits or attachments hereto at the time of execution, then such matters shall be resolved according to terms and conditions agreed to by the Parties at a later date, and shall be incorporated into this Agreement at that time or made a part of a subsequent agreement.

12.3 Excluded Areas

Notwithstanding anything in the RFQ, Contractor's proposal, this Agreement or anything else to the contrary, Contractor is not obligated to install the Network or make the Services available in Excluded Areas. Excluded Areas shall consist of all areas of the County in which the Contractor cannot, exercising commercially reasonable and technically feasible efforts, obtain sufficient and properly located Suitable Assets on which Contractor may operate its wireless communication equipment to provide the services required hereunder, or areas where Contractor's commercially reasonable efforts cannot resolve material RF Interference. Upon request from the Authority, Contractor shall provide Authority with the results of the tests or studies utilized by Contractor in reaching its determination that an area should be an Excluded Area. No area shall be designated an Excluded Area until the Authority and Contractor have jointly agreed that such area constitutes an Excluded Area. Such agreement not to be unreasonably withheld by the Authority; however, the Authority reserves the right to conduct its own tests or studies at its own expense in order to independently assess whether an area should be designated as an Excluded Area.

Contractor and the Authority will jointly review the Coverage Area under this Section on an annual basis to determine if any area should no longer be designated as an Excluded Area.

13. Service Levels.

Contractor shall provide service over the Network in accordance with the service levels set out in the attached **Exhibit F**. Service level obligations shall begin upon Final Network Acceptance in accordance with the Acceptance Test Plan (**Exhibit E**). In reaching its determination of Final Network Acceptance, the Authority may conduct its own tests, independent of those required to be conducted by Contractor, and may retain the services of a technical consultant to advise the Authority in reaching this determination.

The service levels shall incorporate requirements including, but not limited to, coverage, throughput, availability/reliability, multi-use services and provisioning, infrastructure, and security. The Authority may, at its sole expense, periodically conduct proof of performance tests to confirm that the Network satisfies service level standards established in **Exhibit F**.

13.1. Customer Service.

Contractor acknowledges the importance of quality customer service and ongoing Network monitoring and performance review; and as such, Contractor shall make

customer service representatives available during normal business hours and shall monitor Network performance and respond to customer service inquiries in accordance with the requirements set forth in **Exhibit F**. Contractor shall further provide Authority with monthly summary reports outlining its compliance with each of the reporting metrics in accordance **Exhibit F**.

14. Change in Service Levels.

Contractor shall provide Authority with at least 180 days prior notice of any intention to reduce services. After such reasonable prior notice the Authority shall either:

- (i) Accept the proposed change in service on such terms and conditions as the parties find mutually agreeable in which case the service levels in **Exhibit F** shall be revised appropriately;
- (ii) Require that the Contractor maintain existing service levels to the extent not beyond the reasonable control of Contractor; or
- (iii) Declare a Default of this Agreement.

This Section shall only apply to Material Changes of Service, as defined in **Exhibit A**, which shall require the consent of the Authority, and whose consent shall not be unreasonably withheld, conditioned, or delayed.

Notwithstanding the foregoing, Contractor shall not be required to obtain consent from the Authority for any non Material Change of Service.

15. Availability of Power.

Authority and Contractor acknowledge that the Network requires a 24 hour reliable source of power. In the instances where the Network will be mounted on Public Facilities, the Authority, Service Authority and the County, respectively, agree to provide reasonable access to their power sources in a manner authorized by Authority, Service Authority or the County (as appropriate), and provided that there is existing capacity to accommodate the additional demand. Notwithstanding the foregoing, neither the Authority, Service Authority nor the County is obligated under this Agreement to upgrade existing power sources or to provide new power sources to Contractor. The cost of any and all power required by Contractor shall be the sole responsibility of Contractor.

16. Marketing Cooperation.

Contractor will be responsible for all aspects of marketing and administering the operations of the Network, including but not limited to, soliciting Network subscribers, administering subscriber accounts, and handling all delinquent payment and collections matters. Authority will reasonably cooperate, as determined by the Authority, in marketing, advertising, and promotional plans, schedules, and materials regarding the Network.

17. Permits.

Notwithstanding Authority's agreement to assist Contractor as set out in Section 5 or elsewhere in this Agreement, Contractor is ultimately responsible for obtaining all applicable permits, licenses, and authorizations as are required for Contractor to comply with all applicable local, state and federal laws, regulations and ordinances. Provided that Contractor has complied with all filing procedures, deadlines and other applicable permitting or licensing requirements, Contractor shall not be responsible for any delays arising from the permitting, approval, inspection, or zoning process; and during any such delay, the Authority shall extend all milestones, standards, and deadlines (with respect to the area impacted by the delay) established in the Coverage and Implementation Plan (**Exhibit E**) and service levels (**Exhibit F**) by the same number of days Contractor is delayed.

18. Work Standards.

Contractor agrees to perform the Services in accordance with all applicable ordinances laws and regulations, including all traffic laws and regulations. Contractor will use commercially reasonable efforts to notify affected residents, property owners, and businesses prior to commencement of work that can be reasonably anticipated to adversely affect the quiet enjoyment of their property. Contractor acknowledges that neither the Authority, Service Authority, nor the County has made warranties or representations regarding the fitness, safety, or suitability of any Public Facilities for the installation of Contractor's Facilities, and that any performance of work or costs incurred by Contractor or provision of Services contemplated under this Agreement by Contractor is at Contractor's sole risk.

19. Emergencies.

In order to properly prepare for natural or man-made disasters or emergencies, Contractor and the Authority may form a working group within a reasonable period of time after the execution of this Agreement that will determine ways in which, if possible, the Network can be used to support the County's public health, welfare, safety, and law enforcement efforts during such disaster or emergency. If feasible and if expressly permitted by the Authority, the Network will utilize the County alternative energy sources to ensure that the Network stays operational subject to prior approval which may be withheld in the Authority's sole and absolute discretion.

20. Digital Inclusion Agreement.

The Authority wishes to utilize the Network to reach Digital Inclusion Residents. Contractor agrees to use reasonable efforts to establish a program with the Authority that includes training, and free or discounted high speed Internet access to Digital Inclusion Residents. The Parties anticipate that any services or training provided to Digital Inclusion Residents shall be subsidized, at least in part, by the additional revenues generated from Network Services provided by Contractor pursuant to Section 41.

21. Relocation of Network Equipment.

Authority may from time to time require Contractor to remove or relocate a Network element installed on Public Facilities. Contractor shall remove or relocate the specified piece of equipment upon a request from Authority based on the specific configuration or

configuration of the right-of-way or roads in the right-of-way, including, for example, a removal or relocation caused by widening of the road. When such a removal or relocation is required the Authority shall reasonably assist Contractor in locating a suitable alternative to relocate the Contractor's Facilities, and shall bear all costs directly associated with such a move request. Upon written request by the Authority, Contractor shall provide a cost estimate in advance of such a relocation of Network equipment.

22. Removal of Equipment.

Unless Authority and Contractor enter into an agreement that provides otherwise, upon the expiration, completion, or earlier termination of this Agreement, Contractor shall promptly, safely, and carefully remove all equipment installed by Contractor from all Public Facilities and return the Public Facilities to the condition in which they existed immediately prior to Contractor installation. Contractor acknowledges and agrees that it bears all risk of loss or damage of its equipment and materials installed on Public Facilities or in public rights-of-way, except for damages arising from the negligence or wrongful acts of Authority, Service Authority, County or their respective employees, agents, or contractors. The removal will be according to a mutually agreed schedule over a time period that shall not exceed sixty (60) days from the earlier of the expiration, completion, or earlier termination of this Agreement; provided, however, that the Parties shall work together to ensure a smooth transition of any affected customers on the Network.

23. Payment of Taxes.

Subject to all provisions of this Agreement, Contractor will pay all taxes assessments and fees applicable to Contractor for the installation and operation of the Network. Contractor will pay any and all taxes, assessments, and fees, which may be levied against Contractor by any tax authority or other governmental entity. Any customer rate increase that is directly necessitated by a local wireless broadband services tax or similar tax assessed against Contractor by the County or Authority shall not be deemed unreasonable under Section 29(E).

24. Independent Contractor.

Contractor in the performance of the work and Services agreed to be performed pursuant to this Agreement shall act as and be an independent contractor and not an agent or employee of the Authority, Service Authority or the County. Contractor shall operate the Network as Contractor determines in its sole discretion provided that such operation shall at all times be in accordance with the requirements of this Agreement.

25. Force Majeure.

Neither Party shall be responsible for any of its obligations under this Agreement prevented or delayed by reasons which are not reasonably foreseeable, not reasonably avoidable, or otherwise outside the reasonable control of the Parties, including but not limited to, Acts of God, floods, fires, hurricanes, lightning strikes, tornadoes, earthquakes or other severe weather conditions, acts of public enemy insurrection, war, riot, sabotage, act of terrorism, epidemic, strike, freight embargoes, concealed and unknown conditions below the surface of the ground differing materially from those ordinarily encountered

and generally recognized as inherent in construction work or which are not reflected on current maps or drawings of underground conditions, wrongful physical obstruction by any Person at any installation site, any law, order, regulation, direction, action, or request of the United States government or of any governmental, judicial, regulatory, civil, or military authority having jurisdiction over the Parties, national emergencies or failure of any common carrier or third party facility not affiliated with Contractor.

The time within which any obligation must be performed under the terms of this Agreement shall be extended for a reasonable period to be determined jointly by the Authority and Contractor where timely performance is prevented due to a Force Majeure Event. Contractor or the Authority shall promptly notify in writing the other Party of any Force Majeure event described in this Section and in such notice shall indicate the anticipated extent of such delay and shall indicate whether and to what extent, if any, the delayed Party anticipates that such event shall affect the timely performance of such Party obligations under this Agreement.

26. Assignment.

No assignment or transfer of this Agreement in whole or in part shall occur without the prior written consent of the Authority, provided that the Authority shall not unreasonably withhold, delay, or condition such consent. No assignment shall be made to a person, group of persons or affiliate that is not legally, technically, or financially qualified, as determined by the Authority, to operate the Network and satisfy the obligations of this Agreement. Contractor agrees to provide the Authority with information required to adequately assess the qualifications of any potential assignee, including but not limited to, proof of incorporation, financial statements, tax returns, technical qualifications, business models or plans, and professional references.

The Authority shall have ninety (90) days from the date it receives all such information in which to review it and respond to Contractor. The Authority shall comply with the nondisclosure provisions of this Agreement with regard to any such information that may be proprietary or otherwise confidential as determined by Contractor and potential assignee. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. The Authority may retain at its own expense, legal, financial, technical, or other consultants to review the information provided by Contractor and advise the Authority. Any consultant so retained shall also be bound by the nondisclosure provisions of this Agreement.

27. Ownership.

Except as provided under the Termination provisions under Section 29, and subject to the terms and conditions regarding Financed Equipment as set out in the Project Financing Documents (**Exhibit C**), Contractor shall hold and retain title to the Network and each device and components thereof, and no portion of the Network shall become a fixture unless Contractor expressly agrees otherwise in writing. In no event will Authority translate, modify, disassemble, or reverse engineer the Network, or create derivative works based on any portion of the Network or authorize others to do so. Contractor shall have exclusive access to and use of all of Contractor's Facilities. However, Contractor

shall provide Authority with access required to perform any tests or studies permitted under the Agreement.

28. Liability; Insurance.

A. To the extent permitted by the laws of the Commonwealth of Virginia, the Authority will be responsible for its agents' and employees' acts and omissions within the scope of their duties which cause injury to persons or property. Contractor agrees that it shall be responsible for its agents' and employees' acts and omissions within the scope of their duties which cause injury to persons or property. Notwithstanding the above, neither party shall be responsible for punitive damages assessed against its employees or agents, or for its employees' or agents' criminal conduct. Nothing herein shall be deemed as a waiver of sovereign immunity or any other defense available to the Authority, County, Service Authority, or any of other defenses available to Contractor. The Authority shall provide Contractor with its certificate of liability insurance coverage.

B. The Parties shall give each other prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding related to this Agreement and any work conducted or services provided hereunder.

C. The Contractor shall maintain throughout the Term of this Agreement, general comprehensive liability insurance insuring the Contractor. All liability insurance shall include an endorsement in a specific form which names as joint and several insured's the Authority, Service Authority and the County, and the Authority's, Service Authority's and County's officials, employees and agents, with respect to all claims arising out of the operation and maintenance of the Network. Liability insurance mentioned herein below shall be in the minimum amounts of:

(i) \$1,000,000.00 for bodily injury or death to anyone person, within the limit of five million dollars (\$5,000,000) for bodily injury or death resulting from any one accident;

(ii) \$1,000,000.00 for property damage, including damage to the Authority's, Service Authority's or the County's property, from any one accident;

(iii) \$1,000,000.00 for all other types of liability resulting from any one occurrence;

(iv) Workers Compensation Insurance as required by the Commonwealth of Virginia; and

(v) Contractor shall carry and maintain in its own name automobile liability insurance with a limit of \$1,000,000 for each person and \$1,000,000 for each accident for property damage with respect to owned and non-owned automobiles for the operation of which the franchisee is responsible.

D. The inclusion of more than one (1) insured shall not operate to increase the limit of the Contractor's liability, and that insurer waives any right of contribution with insurance which may be available to the Authority, Service Authority or County.

E. All policies of insurance required by this Section shall be placed with companies which are qualified to write insurance in the Commonwealth of Virginia and which maintain throughout the policy term a General Rating of "A+" (Superior) and a Financial Size Category of "XV" (\$2 Billion or greater) as determined by Best Insurance Rating Services.

F. Certificates of insurance obtained by the Contractor in compliance with this section must be approved by the Authority attorney, and such insurance policy certificate of insurance shall be filed and maintained with the Authority during the Term of this Agreement. The Contractor shall immediately advise the Authority attorney of any litigation that may develop that would affect this insurance.

G. Should the Authority find an insurance document to be in non-compliance, then it shall notify the Contractor, and the Contractor shall be obligated to cure the defect.

H. Neither the provisions of this section, nor any damages recovered by the Authority, Service Authority or County hereunder, shall be construed to, nor shall, limit the liability of the Contractor under this Agreement or otherwise.

I. The insurance policies provided for herein shall name the Authority, Service Authority, the County, and their respective officers, employees and agents as additional insureds, and shall be primary to any insurance or self-insurance carried by the Authority or County. The insurance policies required by this section shall be carried and maintained by the Contractor throughout the term of the Agreement and such other period of time during which the Contractor operates or is engaged in the removal of the Network. Each policy shall contain a provision providing that the insurance policy may not be canceled by the surety, nor the intention not to renew be stated by the surety, until thirty (30) days after receipt by the Authority, Service Authority and County by registered mail, of written notice of such intention to cancel or not to renew.

J. Contractor shall insure Financed Equipment as required in the Project Financing Documents (**Exhibit C**).

K. The Authority shall maintain throughout the Term of this Agreement sufficient, appropriate, and customary insurance coverage for its risks and potential liabilities.

29. Default, Termination and Remedies.

A. General. This Agreement shall not be terminated by the Authority unless a default (as set out below) has occurred and the applicable, if any, notice provisions, cure period and dispute resolution processes are followed. Nothing in this Section shall prevent the Authority from terminating any Services or exercising its other remedies set forth in other provisions of this Agreement or under Applicable Law or in equity.

B. Performance Defaults; Remedies. The occurrence of any one or more of the following events constitutes a default and breach of this Agreement by Contractor:

(i) Failure to Begin Network Implementation. The failure by Contractor to begin implementation in accordance with the Coverage and Implementation Plan (**Exhibit E**) shall constitute a default of the Agreement. In the event Contractor commits such a default, and does not cure such default within thirty (30) days after a default notice is delivered to Contractor, then the Authority shall first engage in the dispute resolution processes described in Section 29(H) and thereafter be entitled to exercise its rights to terminate this Agreement due to the default and/or exercise all other remedies available to the Authority under this Agreement, at law or in equity.

(ii) Failure to Complete Network. The failure by Contractor to achieve Network Acceptance and fully implement the Network in accordance with the Coverage and Implementation Plan (**Exhibit E**) shall constitute a default of the Agreement. The time for completion will be extended by the number of days of delay if there are unreasonable delays that exceed what is the normal, usual, and foreseeable time period taken for such task caused by the Authority, providers of telecommunications, electricity, or third parties (other than subcontractors of Contractor) not under the control of Contractor and for Force Majeure Events. Contractor shall provide the Authority with written notice of delays with supporting documentation.

In the event Contractor commits a default, as described in this paragraph, and does not cure such default within thirty (30) days after a default notice is delivered to Contractor, after taking into account any applicable extensions, then the Authority shall first engage in the dispute resolution processes described in Section 29(H) and thereafter be entitled to exercise its rights to terminate this Agreement due to the default and/or exercise all other remedies available to the Authority under this Agreement, at law or in equity.

(iii) Network Outage. Network Outages shall constitute a default of the Agreement as set out in this paragraph. In the event that, after Network Acceptance, more than twenty percent (20%) of the receiving/transmitting nodes in the Network are incapable of connecting Network services subscribers to the Internet for an entire calendar day, the Network will be considered "**Dark**" and that day will be considered a "**Dark Day**", provided that such day will not be considered a Dark Day if the failure to satisfy the above test was caused by the Authority, providers of telecommunications, electricity, or third parties (other than subcontractors of Contractor) not under the control of Contractor or by Force Majeure Events. If the Network is continuously Dark for a period of fourteen (14) or more days, then this shall constitute a default, and Authority may send a notice of termination, which shall be effective upon thirty (30) days from receipt by Contractor if such default has not been cured by the Network operating without any Dark Days for fourteen (14) days continuously. If Contractor does cure the default by the Network operating without any Dark Days for fourteen (14) days continuously prior to the end of such thirty (30) day period then the termination shall not be effective and the default shall be cured. If Contractor is unable to cure the default within said thirty (30) days by the Network operating without any Dark Days for fourteen (14) days

continuously, then this Agreement shall terminate after the end of said thirty (30) day cure period.

(iv) Failure to Maintain Service Levels. Contractor's repeated and substantial failures to meet performance standards and service levels as set out in **Exhibit F** shall constitute a default of the Agreement. In the event Contractor commits such a default, and does not cure such default within thirty (30) days after a default notice is delivered to Contractor, then the Authority shall first engage in the dispute resolution processes described in Section 29(H) and thereafter be entitled to exercise its rights to terminate this Agreement due to the default and/or exercise all other remedies available to the Authority under this Agreement, at law or in equity. Prior to the Authority engaging in such dispute resolution processes or invoking such termination rights, the Parties shall use reasonable efforts to determine the cause of such service level failures by conducting a root cause analysis, comparative benchmarking and other similar procedures.

C. Payment Defaults; Remedies. The failure by Contractor to make any bona fide undisputed payment of the Fee required in Section 4.3, or any other payment required to be made by Contractor, other than any payments due under the Project Financing Documents (**Exhibit C**), as and when due, shall constitute a default of this Agreement. Contractor shall have thirty (30) days within which to cure such a default by making the required payment in full, plus any applicable late fees. The Authority shall first engage in the dispute resolution process described in Section 29(H) and thereafter be entitled to exercise its rights to terminate the Agreement after providing written notice to Contractor if Contractor fails to pay such amounts within thirty (30) days after the original due date.

(i) Default under Project Financing Documents. Any material default by Contractor under the Project Financing Documents (**Exhibit C**) shall constitute a material default of the Agreement, and the applicable provisions of this section and any other applicable provisions of the Agreement shall apply to such default. In the event of a conflict between any of the terms or conditions of the Agreement and the Project Financing Documents, then the Project Financing Documents shall control.

(ii) Late Payments. If any payment due under Section 4.3, or any other payment required to be made by Contractor is more than thirty (30) days past due, then Contractor promises to pay the Authority immediately upon demand a late fee in the amount of five percent (5%) of any such payment.

D. Assignment Defaults; Remedies. The following shall constitute a default of the Agreement for which the Authority, upon written notice to Contractor, may terminate the Agreement: (i) the making by Contractor of any general assignment or general arrangement for the benefit of creditors; (ii) the filing by or against Contractor of a petition to have Contractor adjudged a bankrupt or a petition or reorganization or arrangement under any law relating to bankruptcy unless the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or a receiver to take possession of substantially all Financed Equipment or of Contractor's interest in this Agreement, where possession is not restored to Contractor within thirty (30) days; or (iv) the attachment,

execution or other judicial seizure of substantially all Financed Equipment or of Contractor's interest in this Agreement, where that seizure is not discharged within thirty (30) days.

E. Default by Failure to Provide Certain Network Services and Pricing; Remedies.

The failure by Contractor to make Contractor's Services available to subscribers at fair, reasonable, and market competitive rates, computation of which shall not include special or promotional offerings or pricing, or failure by Contractor to make available such services to Digital Inclusion Residents in accordance with any agreement under Section 20 shall constitute defaults of this Agreement. The following procedures and remedies shall apply to such defaults:

(i) Contractor's rates shall be presumed to be fair, reasonable and market competitive. However, if Authority feels at any time that rates are not fair and reasonable, the Authority may request, and Contractor shall disclose and provide Authority the opportunity to inspect Contractor's costs and fee structure in detail. If, after reviewing such information, the Authority determines that Contractor's fees for Network services are not fair and reasonable, then the Contractor shall have the burden of proving otherwise.

(ii) If Contractor fails to prove its rates are fair and reasonable to the satisfaction of the Authority, then the matter shall be submitted to an independent auditor with the requisite qualifications and expertise. The Parties shall equally share the costs of an independent auditor.

(iii) If the Parties cannot agree on a single auditor, then a panel of three independent auditors shall consider the dispute. Each party shall choose one such auditor, and the two so selected shall choose the third. Each Party shall each pay their respective auditor's fees, and equally share the costs of the third auditor. If a majority of the panel finds customer rates for Services to be unfair or unreasonable as compared to rates charged by other wireless Internet providers for comparable services, then Contractor shall be in default of the Agreement, and the Authority may terminate the Agreement upon thirty (30) days written notice to Contractor. "**Comparable services**" shall mean wireless broadband Internet access service packages offered by providers substantially similar to Contractor to customers in similarly situated, predominantly rural markets. Comparable services shall not include special, promotional or non-Internet access services, or services that are not wireless broadband, such as dial-up, for example.

F. Other Defaults; Remedies. Contractor's material failure to observe or perform any of the substantial covenants, conditions or provisions of this Agreement, or of any attachments hereto, required herein to be observed or performed by Contractor shall constitute a default of this Agreement. In the event Contractor commits such a default (for which there is no other specific remedy provision herein), and does not cure such default within thirty (30) days after a default notice is delivered to Contractor, then the Authority shall first engage in the dispute escalation and resolution processes described in Section 29(H) and thereafter be entitled to exercise its rights to terminate this Agreement

due to the default and/or exercise all other remedies available to the Authority under this Agreement, at law or in equity.

G. Default by Authority; Remedies. Contractor has no right, except as provided in this paragraph and in Section 8.5(v), to terminate this Agreement as a result of the Authority's default. In the event of the Authority's material failure to observe or perform any of the substantial covenants, conditions or provisions of this Agreement, or of any attachments hereto, required herein to be observed or performed by Authority and Authority's failure to cure such default within thirty (30) days after a default notice is delivered to the Authority, then Contractor shall first engage in the dispute escalation and resolution processes described in Section 29(H). Thereafter Contractor shall be entitled to exercise all other remedies available under this Agreement, at law and/or in equity. In addition, Contractor shall be entitled to terminate this Agreement if the Authority substantially breaches its obligations hereunder or if the actions of third parties or Applicable Law make it unfeasible for Contractor to operate the Network.

H. Dispute Resolution. Any dispute between the Parties or default by either Party during the Term of this Agreement that arises under paragraph B(i), B(ii), B(iv), F, or G of this Section 29, or any other dispute or default not having a specific remedy set out herein shall be subject to the following administrative remedy prior to any action for damages, equitable remedies, specific performance, or termination by the Authority of the rights of Contractor or termination of this Agreement. Both Parties shall attempt to resolve any controversy claim, problem, default, or dispute ("**Dispute**") arising out of, or related to, this Agreement and subject to this paragraph through good faith consultation in the ordinary course of business. In the event that Dispute is not resolved by the project managers of each Party, either Party may upon written notice ("**Request for Internal Resolution**") to the other request that the matter be referred to individual officials within each respective organization with express authority to resolve the Dispute and agree to resolutions and compromises ("**senior management officials**"). A written Request for Internal Resolution shall be given by either Party within a reasonable time of the Parties' knowledge of the unresolved Dispute. Senior management officials shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within a reasonable time of the Request for Internal Resolution. Senior management officials are required to meet only once, but may mutually agree to meet more than once if it appears that further meetings may successfully resolve the Dispute. All of the requirements for the resolution of the Dispute as described in this paragraph shall be referred to collectively as the "**Resolution Process**".

I. Condition Precedent to Termination of Contractor's Rights. The Authority may not terminate this agreement without the written consent by Contractor unless: (a) the dispute Resolution Process in Section 29 H, if applicable, has been completed, and (b) the Authority has otherwise properly exercised its termination rights in accordance with this Agreement and any attachment hereto, as applicable, and in accordance with Applicable Law.

J. Litigation Expenses. In the event of litigation arising out of any dispute or default related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

K. Effect of Termination. In the event of termination of this Agreement, Contractor's right to use and occupy Public Facilities is thereby revoked and, consistent with the terms of the Agreement, Contractor may not claim any further rights or privileges.

(i) Unless the Authority exercises its rights to assume ownership of Financed Equipment pursuant to the Project Financing Documents (**Exhibit C**), Contractor shall, within a reasonable time but not to exceed sixty (60) days, remove all Financed Equipment located on Public Facilities.

(ii) Contractor shall within a reasonable time, but not to exceed sixty (60) days, remove all of Contractor's Equipment located on Public Facilities.

(iii) Unless provided otherwise under the terms set out in the Project Financing Documents (**Exhibit C**), any facilities Contractor fails to remove within sixty (60) days of termination shall be considered abandoned and, at the option of the Authority, Contractor's interest shall pass to the Authority.

(iv) At the discretion of the Authority and to the extent contractually possible, Contractor shall assign to the Authority all leasehold interests held in accordance with Section 6 of the Agreement.

(v) The Authority may freely assume and assign the title to any abandoned facilities and any leasehold interests of the Contractor assigned hereunder.

(vi) To the extent that title has passed to the Authority or, rights have been assigned to the Authority hereunder, the Authority may assign and assume such facilities to a new provider selected through a competitive process.

30. Letter of Credit.

30.1. Contractor shall within three (3) months after the execution of this Agreement, furnish to the Authority and County as beneficiaries, an irrevocable letter of credit ("**Letter of Credit**"), issued by a bank or financial institution mutually acceptable to the parties, acceptable in form and substance to the Authority and County, with the original face amount equal to the total amount of the principal and interest set forth on the payment schedule attached to the VABB Note (defined in **Exhibit C**), securing: (i) the faithful performance by the Contractor of its duty to pay amounts due from Contractor to the Authority under the Project Financing Documents; and (ii) costs and expenses incurred by the Authority arising from the Sullivan Litigation (defined in Section 51).

30.2. The Authority is authorized and may make draws upon such Letter of Credit only if: (i) the Transition Plan (defined in Section 51) is implemented in

accordance with Section 51.2 or Contractor fails to make a payment as set forth in Project Financing Documents due to the Sullivan Litigation or due to any other similar claims against Contractor; (ii) the Authority exhausts its rights and remedies under Section 51 of this Agreement and either Section 8(g) or Section 8(h) of the VABB Loan Agreement (attached hereto in **Exhibit C**); and (iii) the Authority certifies to the Letter of Credit financial institution that the preceding (i) and (ii) have occurred. Within three (3) days of a draw, the Authority shall mail to the Contractor, by recognized overnight courier service and by certified mail, return receipt requested, written notification of the amount, date and purpose of such draw. All draws made by the Authority shall not exceed in the aggregate the original face amount of the Letter of Credit.

30.3. The Contractor shall so obtain and maintain the Letter of Credit, which shall expire and terminate when both of the following have occurred: (i) Final Network Acceptance under the Coverage and Implementation Plan; and (ii) Contractor has fully satisfied its obligations under the Project Financing Documents. Notwithstanding the preceding sentence, the Parties agree to use the dispute resolution process set forth in Section 29(H) on no less frequently than each anniversary of the Effective Date to discuss in good faith whether the Letter of Credit is still reasonably needed and whether to terminate the Letter of Credit early.

30.4. In the event Contractor breaches its obligation in Section 30.1 to so obtain the Letter of Credit due to being unable to obtain reasonable and customary terms for the Letter of Credit or for any other reason, the Parties agree to follow the dispute resolution process set forth in Section 29(H) to respond to such breach. This Section 30.4 shall be the Authority's sole and exclusive remedy for such breach and shall be in lieu of the Authority's right to terminate this Agreement due to such breach.

30.5. The Public Facilities Coordination Fee shall be reduced by the amount of Contractor's costs and expenses arising from obtaining and maintaining the Letter of Credit.

31. No Third Party Rights.

No provision of this Agreement shall create, or be construed to create for the public or any member thereof, or any other person or business, rights as a third party beneficiary hereunder, or to authorize any person not a party to this Agreement to maintain a suit for damages of any sort pursuant to the terms or provisions of this Agreement.

32. Compliance with Laws.

The Contractor shall comply with applicable federal, state and local laws, ordinances, permit requirements, regulations, orders, directives, rules and policies now in force or as hereafter enacted, adopted or promulgated.

33. Radio Frequency Radiation.

The Network shall be in compliance with FCC electromagnetic radiation standards, rules, and regulations during the Term and any renewal term of this Agreement.

34. Headings.

The headings of sections throughout this Agreement are intended solely to facilitate reading. Such captions shall not affect the meaning or interpretation of this Agreement.

35. Severability.

If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial decision to be void, voidable, or unenforceable, then such provisions shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining provisions of this Agreement.

36. Governing Law and Venue.

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Virginia. Any action brought relating to the interpretation or enforcement of this Agreement shall be brought in the courts of King George County, Virginia, unless otherwise required by law.

37. Approval.

If the approval or consent of any Party is required under this Agreement such approval or consent may only be given in writing and shall not be unreasonably withheld, conditioned, or delayed.

38. Legal Authority.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the Contractor and Authority, respectively.

39. Miscellaneous.

Unless otherwise indicated words describing the singular number shall include the plural and vice versa, and words denoting each gender shall include the other gender and words denoting natural persons shall include corporations and partnerships and vice versa. The use of the terms "including" or "includes" shall in all cases herein mean "including without limitation" or "include without limitation," respectively. Unless otherwise indicated references to articles sections subsections or schedules shall refer to those portions of this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting or causing any instrument to be drafted. This Agreement may be executed in counterparts.

40. Reservation of Rights.

The failure of a Party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a Party of any condition or of any breach of any term, covenant, representation, or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances, or a waiver of any other condition or breach of any other term covenant representation or warranty.

The County, Service Authority and the Authority reserve the right, subject to the requirements of Sections 4.1 (Attachment to Public Facilities), 4.5 (Quiet Enjoyment of Public Facilities), and the interference provisions of Section 8 et seq., to grant to any other party during the Term of this Agreement the right to access and utilize Public Facilities.

41. Negotiation for Network Services to County Government.

In recognition of Contractor's considerable financial and human capital investment made to service the businesses and residents of the County and its commitment to provide discounted service to certain low income residents of the County, the Authority agrees to facilitate negotiations between the Contractor and the County for the opportunity to provide the Services, including without limitation, Internet connectivity and other communications services to the County government, departments, divisions, and agencies thereof, including the King George County school division.

Such negotiations will occur at the time the service is desired or requested by the County; provided, however, if the County determines in its sole discretion that such services are better performed by others then the County shall not be required to grant Contractor the privilege or right to provide such services.

42. Confidentiality.

To the extent permitted by law, neither the County nor the Authority will disclose any of the Proprietary Information of the Contractor for three (3) years following the termination of this Agreement. "**Proprietary Information**" of Contractor means the business plans, financial information and technical information about the Network and the customers of Contractor and its vendors, as determined by Contractor to be confidential or otherwise trade secrets under Applicable Law. Authority's and County's obligation not to disclose trade secrets of Contractor will continue as long they remain trade secrets under Applicable Law.

The Parties agree that: (i) portions of Exhibits D through H to this Agreement and certain other information, which Contractor may provide to the Authority from time to time under this Agreement, are confidential proprietary records and trade secrets created in accordance with Code of Virginia §2.2-3705.6.19; and (ii) such information is intended are indented by the Parties to be excluded from the Virginia Freedom of Information Act ("FOIA"). Upon submission of a request from a member of the public for copies of such Exhibits or other similar documents or records, the Authority agrees to provide information contained therein only to the extent required by FOIA, and all information deemed confidential proprietary records and trade secrets as permitted by state law shall be redacted from such copies.

43. Notice.

Any notice, request, instruction, or other document to be given hereunder by a Party pursuant to this Agreement shall be in writing and shall be deemed to have been given when received if given in person or by courier or a courier service; on the date of

transmission if sent by facsimile, email, or other wire transmission; or, three (3) business days after being deposited in the US mail, certified or registered mail postage prepaid.

If to Authority:

King George County Wireless Authority
ATTN: Secretary-Treasurer
10459 Courthouse Drive, Suite 200
King George, Virginia 22485

If to Contractor:

Virginia Broadband, LLC
14114 Lover's Lane, Suite 135
Culpeper, Virginia 22701

44. Prior Agreements and Amendments.

This Agreement, including all attachments hereto, constitutes the entire agreement between the Parties. Except as set forth herein there are no promises, representations, or understandings between the Parties of any kind or nature whatsoever. Modifications to this Agreement shall be valid only if provided in a separate writing signed by an authorized representative of each Party.

45. Network Upgrades.

Contractor shall, at its sole expense and discretion, keep the Network updated in order to take advantage of technology improvements and in order to ensure that its service offerings are competitive in the rural wireless broadband consumer marketplace. Contractor acknowledges its intent to upgrade its system speeds as necessary to compete with similarly situated wireless broadband service providers in the market, and to ensure that its end users have reasonably competitive product offerings. Upgrades to the Network will be at parity with the upgrades performed in other comparable localities in which Contractor operates wireless broadband Internet access networks. Contractor agrees to provide the Authority with the list of comparable localities to use for such comparison, which (i) shall be similar in terms of geographic size, population, household density or other such factors, and (ii) shall be subject to joint approval by the Authority and the Contractor. Comparable localities shall include, but not be limited to the following Virginia localities: Caroline County, Culpeper County, and Richmond County. Contractor shall maintain portions of the Network that provide free or discounted high speed Internet Access to Digital Inclusion Residents pursuant to the terms of any agreement by the Parties under Section 20. Contractor's obligations under this Section 45 are based on average service in the aggregate comparisons, not including special or promotional offerings or pricings.

46. Network Acceptable Use Policy.

The Contractor will promote the open and interconnected nature of the public Internet allowing users to access the lawful Internet content of their choice while subject to

reasonable restrictions. Such policies shall be established in Contractor's Acceptable Use Policy, which will be revised from time to time by Contractor and attached as **Exhibit G**.

47. Project Financing Documents.

Contractor and the Authority have agreed to share the costs associated Phase I deployment of the Network in order for the Services to reach the entire Coverage Area and achieve Network Acceptance as set out in the Coverage and Implementation Plan as soon as practicable after the Effective Date of this Agreement. These commitments by the Parties to fund portions of the project costs are set out in more detail in **Exhibit C**.

48. Recitals.

The Recitals are hereby incorporated into this Agreement by reference.

49. Definitions.

Defined terms used in this Agreement but not otherwise defined shall have the meanings ascribed to them in **Exhibit A** (attached).

50. Non-Performance.

Contractor's or Authority's failure to perform any obligations under this Agreement, including Contractor's duty to meet the required service levels, shall be excused if and to the extent such non-performance is caused by: (i) the wrongful or tortious actions of the other Party; or (ii) the failure of the other Party to perform its obligations under this Agreement.

51. Transition to Succeeding Provider.

51.1. Planning. Contractor shall use reasonable efforts in good faith to plan for the potential transition of the Financed Equipment to a succeeding provider. As part of this planning, Contractor shall keep the Authority reasonably, in a timely manner, informed of Virginia case number 2007-L-310 ("**Sullivan Litigation**") and create a transition plan ("**Transition Plan**") that includes without limitation specifying the following Contractor tasks: (i) providing diagrams, specifications and operational details to the succeeding provider; (ii) assisting in the orderly transition of the Financed Equipment to the succeeding provider with minimal outage or degradation; (iii) using reasonable efforts in good faith to enter into a data transmission service agreement between Contractor and the succeeding provider to interconnect the Network's backhaul links to the Internet; and (iv) working with the Authority to agree on a more detailed process used to invoke and implement the Transition Plan (consistent with Section 51.2). The Transition Plan shall be subject to the Authority's reasonable review and comment and will be completed by Contractor within three (3) months after the Effective Date.


51.2. Transition. In the event (i) the Authority, in good faith and in its reasonable discretion, determines (and notifies Contractor in writing of its determination, sent by express or overnight service, with delivery confirmation to Contractor's President and/or CEO and otherwise in accordance with Section 43) that there is a high likelihood that the Sullivan Litigation will result in the bankruptcy of the Contractor or in this

Agreement being invalidated or found to be unenforceable due to the likely outcome of the Sullivan Litigation or as a result of any other similar claims against Contractor that may arise during the Term of this Agreement, and (ii) Contractor does not, within five (5) business days of receipt of such determination notice, reasonably disagree in good faith with such determination, Contractor shall implement the Transition Plan and transition the Financed Equipment. In the event the parties can not so agree to implement the Transition Plan, each party within thirty (30) days thereafter shall select a mutually agreeable independent third party to determine when the Transition Plan should be implemented. Such transition of the Financed Equipment shall be governed by the VABB Loan Agreement attached hereto in **Exhibit C**. Contractor and the Authority shall also then use reasonable efforts in good faith to ensure an agreement is entered into between Contractor and the succeeding provider governing the sale and transition to the succeeding provider of the Subscribers and other goodwill arising from the Network and Services. Contractor shall bear the reasonable cost of the planning and transition efforts set forth in this Section 51 and in Section 8(h) of such VABB Loan Agreement. The parties shall mutually agree on how to avoid, mitigate or pay for any amounts beyond such reasonable costs.

[signature page follows]

IN WITNESS WHEREOF the Parties acknowledge and accept the terms conditions and obligations of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

King George County Wireless Authority ("Authority")

By: 
Cedell Brooks, Jr.

Title: Chairman

Virginia Broadband, LLC ("Contractor")

By: _____

Type: _____

Title: _____

IN WITNESS WHEREOF the Parties acknowledge and accept the terms conditions and obligations of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

King George County Wireless Authority ("Authority")

By: _____
Cedell Brooks, Jr.

Title: Chairman

Virginia Broadband, LLC ("Contractor")

By: Warren P. Marshall

Type: Warren P. Marshall

Title: President & CEO

Exhibits (to be attached):

A: Definitions

B: County Resolution appointing Wireless Authority as agent

B(1): Service Authority Resolution appointing Wireless Authority as agent

C: Project Financing Documents (VABB Loan Agreement, VABB Promissory Note, Requisition Form)

D: Network Description

E: Coverage and Implementation Plan (including: (i) narrative, (ii) deployment schedule, and (iii) Acceptance Test Plan/Final Network Acceptance)

F: Service Levels

G. Network Acceptable Use Policy

H. Operating frequencies, antennae configuration and other information necessary to avoid Radio Frequency Interference

Exhibit A: Definitions

Defined terms not otherwise defined in this Agreement will have the meanings set forth below:

“Applicable Law” means all applicable federal, state, and local laws, ordinances, codes, rules, regulations and orders, as they may be adopted or amended from time to time.

“Contractor’s Equipment” means any radios, antennas, Ethernet ports, fiber optic cables, wires or other transmitting, receiving or other equipment used by Contractor in the deployment and operation of the Network, and that are leased or purchased by Contractor independently of the Project Financing Documents (**Exhibit C**).

“Contractor’s Facilities” means both Contractor’s Equipment and Financed Equipment, inclusively.

“Contractor’s Financed Equipment” or “Financed Equipment” means any radios, antennas, Ethernet ports, fiber optic cables, wires or other transmitting, receiving or other equipment used by Contractor in the deployment and operation of the Network and leased or purchased by Contractor under the Project Financing Documents (**Exhibit C**).

“County” means King George County, Virginia.

“Coverage and Implementation Plan” means the scheduled plan for deploying and implementing the Network as agreed to by the Parties and as set out in the Coverage and Implementation Plan (**Exhibit E**).

“Digital Inclusion” means Contractor’s services that make high speed Internet access available to certain low-income individuals or households pursuant to the Agreement.

“Digital Inclusion Residents” means those individuals or households who receive free or discounted high speed Internet access and training in accordance with an agreement to be entered into by the Parties after the Effective Date and pursuant to Section 20 of this Agreement. Potential Digital Inclusion Residents shall be determined by the Authority and may include, but are not limited to, those residents in households where at least one member is a student in the King George County public school system and eligible for the federally assisted National School Lunch Program.

“Excluded Area” means the portions of the Coverage Area (defined in Section 12.2) where Contractor shall not be obligated to operate the Network or provide the Service as further described in Section 12.3.

“Material Change of Service” means either of the following: (i) Contractor has significantly reduced the rated equipment speed on new customer installs without a corresponding change in price that meets the approval of the Authority, or (ii) Contractor

lowers the rated port speed on customer equipment without the knowledge or permission of current customers and without a corresponding change in price.

“Party” means the Authority or Contractor individually and “Parties” means the Authority and Contractor collectively.

"Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert.

“Project Financing Documents” refers to the Loan Agreement and Note between the Authority and Contractor, as set out in **Exhibit C**.

“Public Facilities” means any real or personal property, building or structure, or portion thereof, which (i) is a Suitable Asset, (ii) is owned, leased, permissively used by or otherwise under the legal control of the Authority, the County or the Service Authority, and (iii) Contractor’s access thereto for use in the Network has been granted by the Authority. The two categories of locations that shall be considered Public Facilities as of the Effective Date are the following, where such locations may be amended from time to time with the mutual consent of the Parties (in the event the Parties so consent to replacing a Category 2 Public Facility with a location that is County or Service Authority owned or leased, or is accessible via a Special Exception Permit, as of the Effective Date, such new locations shall be a Category 1 Public Facility):

“Category 1 Public Facilities” means all Public Facilities unless expressly set forth otherwise and includes the following facilities:

All County-owned telecommunications tower(s), including the following as of the Effective Date:

1. King George County Middle School Tower

All Service Authority-owned water towers, including the following as of the Effective Date:

2. Monmouth
3. Oakland Park
4. Purkins Corner

All telecommunications towers to which the Authority/County may access by Special Exception Permit, including the following as of the Effective Date:

5. Pernia/Accurate Auto
6. Grigsby/Rowland
7. Cleydael Limited Partnership
8. Burns
9. Debernard

“Category 2 Public Facilities” means the following, privately-owned telecommunications tower(s) at such time as the Authority or County gains access to such facilities for use by Contractor in the Network:

10. Palbro

11. Rowe Concrete

“RF Interference” means radio frequencies that cause substantial interference with a Party’s commercial or governmental activities.

“Service Authority” means the King George County Service Authority.

“Services” means any service provided by Contractor pursuant to this Agreement that permits users to obtain access to the Internet through the Network, exclusive of other services such as telephone, email or web hosting services which the Contractor may elect to offer.

“Service Levels” means those performance standards set out in **Exhibit F**.

“Subscriber” means users who subscribe to Services provided over the Network by or through the Contractor.

“Suitable Asset(s)” means a vertical asset (tower structure, streetlight pole, rooftop or similar type of asset) of suitable height to which (i) electricity is available 24 hours a day, 7 days a week, (ii) Contractor has access to such asset 24x7, (iii) upon which Contractor may legally install and operate Contractor’s Facilities at commercially reasonable rates, and (iv) where wireless Network operations are feasible, as reasonably determined by the Parties.

“Wireless Broadband” means user access to the Internet and Internet-related services at significantly higher speeds than those available through “dial-up” Internet access services with data transmission speeds exceeding 200 kilobits per second (Kbps), or 200,000 bits per second, in at least one direction: downstream (from the Internet to your computer) or upstream (from your computer to the Internet). As of the Effective Date the Wireless Broadband will include, but are not necessarily limited to, the following three “tiers” of service: Tier 1 = 400 Kbps, Tier 2 = 800 Kbps, Tier 3 = 1.2 Mbps.

“Wireless Services” means Contractor’s services that enable terrestrial wireless digital data communication between the Subscriber’s premise antenna and the Network, without the need for cable or wire lines connecting the Subscriber’s premise equipment to the Network.

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CEDELL BROOKS, JR.
Shiloh Election District

JOSEPH W. GRZEIKA
James Madison Election District

JAMES B. HOWARD
James Monroe Election District

DALE W. SISSON, JR.
At-Large Election District

C. STEPHEN WOLFE II
Dahlgren Election District



COUNTY ADMINISTRATOR
R. BRYAN DAVID
10459 Courthouse Drive, Suite 200
King George, Va. 22485
Telephone: (540) 775-9181
Fax: (540) 775-5248
www.king-george.va.us

At its meeting of Tuesday, July 17, 2007, the King George County Board of Supervisors adopted the following resolution on a motion by C. Steven Wolfe II, seconded by James B. Howard, and carried unanimously:

KING GEORGE COUNTY
RESOLUTION APPOINTING THE KING GEORGE COUNTY WIRELESS AUTHORITY AS
AGENT FOR THE COUNTY REGARDING CERTAIN COUNTY PROPERTY

WHEREAS, on August 1, 2006, the King George County Board of Supervisors established by resolution the King George County Wireless Authority ("Authority"), a public body politic and corporate, and an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, as authorized under the Virginia Wireless Authority Act (§ 15.2-5431.1 et seq. of the Code of Virginia); and

WHEREAS, the Authority was formed for the purpose of providing high speed data service and internet access to local businesses, local government, and the citizens of King George County; and

WHEREAS, on December 21, 2006 the Authority issued a Request for Qualifications No. 48-02-06 ("RFQ") for the deployment, ownership, management, and operation of such a wireless broadband network; and

WHEREAS, the Authority received multiple responses to the RFQ and is now in the process of contracting with the most qualified of the respondents for the network services; and

WHEREAS, certain county-owned property and facilities, including but not limited to communications towers, government buildings, and other facilities and real property will need to be accessed and utilized by the Authority and its contractors throughout the deployment and operation of the network; and

WHEREAS, in order to empower the Authority to effectively and efficiently negotiate agreements with contractors, and ensure appropriate and timely access to county property and facilities, the Board desires to appoint the Authority as its agent for such purposes; and

NOW, THEREFORE BE IT resolved that the King George County Board of Supervisors hereby appoints the King George County Wireless Authority as its agent for the purpose of


negotiating and contracting on the county's behalf, the terms of use of county property and other county facilities as may be necessary for the deployment and operation of a wireless broadband network throughout the county; and be it

RESOLVED FURTHER, that the Authority, including any employees, agents or contractors thereof, shall have access to and shall be entitled to utilize, subject to all applicable local, state and federal laws and any other conditions or restrictions that the county or the Authority may impose, county property and facilities deemed by the Authority to be necessary for the installation, operation or maintenance of a wireless broadband network throughout the county.

FURTHER, the King George County Board of Supervisors shall have the authority to rescind and revoke this agreement at any time, without notice to or agreement by the Authority.

This resolution shall become effective upon its adoption.

Approved: July 17, 2007



Dale W. Sisson, Jr., Chairman
Board of Supervisors
King George, Virginia

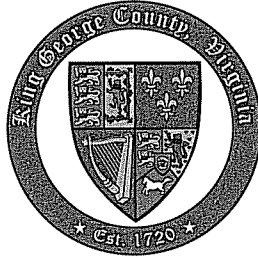
ATTEST:



R. Bryan David
Clerk to the Board

King George County, Virginia

KING GEORGE COUNTY
SERVICE AUTHORITY
"Quality on Tap"



10459 Courthouse Drive, Suite 201
King George, Virginia 22485
Telephone (540) 775-2746
Fax (540) 775-5560

**RESOLUTION APPOINTING THE KING GEORGE COUNTY WIRELESS
AUTHORITY AS AGENT FOR THE KING GEORGE
COUNTY SERVICE AUTHORITY REGARDING CERTAIN SERVICE
AUTHORITY PROPERTY**

WHEREAS, on August 1, 2006, the King George County Board of Supervisors established by resolution the King George County Wireless Authority ("Authority"), a public body politic and corporate, and an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, as authorized under the Virginia Wireless Authority Act (§ 15.2-5431.1 et seq. of the Code of Virginia); and

WHEREAS, the Authority was formed for the purpose of providing high speed data service and internet access to local businesses, local government, and the citizens of King George County; and

WHEREAS, on December 21, 2006 the Authority issued a Request for Qualifications No. 48-02-06 ("RFQ") for the deployment, ownership, management, and operation of such a wireless broadband network; and

WHEREAS, the Authority received multiple responses to the RFQ and is now in the process of contracting with the most qualified of the respondents for the network services; and

WHEREAS, certain Service Authority-owned property and facilities, including but not limited to communications towers, government buildings, and other facilities and real property will need to be accessed and utilized by the Authority and its contractors throughout the deployment and operation of the network; and

WHEREAS, in order to empower the Authority to effectively and efficiently negotiate agreements with contractors, and ensure appropriate and timely access to Service Authority property and facilities, the Board of Directors desires to appoint the Authority as its agent for such purposes; and

NOW, THEREFORE BE IT resolved that the King George County Service Authority Board of Directors hereby appoints the King George County Wireless Authority as its agent for the purpose of negotiating and contracting on the Service Authority's behalf,

the terms of use of Service Authority property and other Service Authority facilities as may be necessary for the deployment and operation of a wireless broadband network throughout the county; and be it

RESOLVED FURTHER, that the Authority, including any employees, agents or contractors thereof, shall have access to and shall be entitled to utilize, subject to all applicable local, state and federal laws and any other conditions or restrictions that the Service Authority or the Authority may impose, Service Authority property and facilities deemed by the Authority to be necessary for the installation, operation or maintenance of a wireless broadband network throughout the county.

FURTHER, the King George County Service Authority Board of Directors shall have the authority to rescind and revoke this agreement at any time, without notice to or agreement by the Authority.

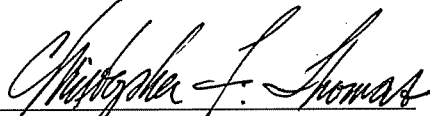
This resolution shall become effective upon its adoption.

Approved: August 7, 2007



Dale W. Sisson, Jr., Chairman
Board of Directors
King George County Service
Authority
King George, Virginia

ATTEST:



Chris Thomas, General Manager
King George County Service Authority

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VABB LOAN AGREEMENT

THIS VABB LOAN AGREEMENT (this “VABB Loan Agreement”), is dated as of January 29, 2008, and is between **VIRGINIA BROADBAND, L.L.C.**, a Virginia limited liability company (“VABB”) and the **KING GEORGE COUNTY WIRELESS AUTHORITY**, a public body politic and corporate of the Commonwealth of Virginia (the “Authority”).

The Authority is authorized and empowered under the laws of the Commonwealth of Virginia (the “Commonwealth”), including the Virginia Wireless Service Authorities Act (the “Act”), codified at Chapter 54.1, Title 15.2 of the Code of Virginia of 1950, as amended (the “Virginia Code”), to provide qualifying communication services, as described in Section 56-484.7:1 of the Virginia Code. The Authority has determined that it would be advantageous to the County of King George, Virginia (the “County”) and the residents and businesses in the County to create a County-wide network (the “Network”) that will make it possible for the County, its residents and businesses to take advantage of existing and new wireless broadband technologies. Such a network would provide seamless and reliable wireless broadband access to the internet for the County, its residents and businesses. This will improve public safety in the County, enhance educational opportunities in the County, support economic and business development in the County and improve the quality of life for the residents of the County.

The County and the Authority would prefer that the Network be developed, administered and maintained by the private sector. Based upon experience and careful study, the County and the Authority have determined that no private sector provider of the facilities and services required for a true County-wide Network is likely to provide such a Network in the foreseeable future, without some supportive assistance from the County and the Authority.

In response to a Request for Qualifications from the County, the County has selected VABB to undertake the development, administration and maintenance of the Network in phases. The Authority and VABB have entered into a Wireless Broadband Network Agreement dated as of January 29, 2008 (the “Network Agreement”) pursuant to which VABB will develop, administer and maintain the Network in phases in exchange for certain types of support from the Authority and the County. In addition to the other benefits to accrue to the County, its residents and businesses from the development of the Network, VABB has agreed in the Network Agreement to work with the Authority to establish a program that includes training and free or discounted high speed internet access to residents who may not be able to afford such access.

To encourage and support the development of the Network by VABB, the Authority has entered into an Authority Loan Agreement dated as of January 29, 2008 (the “Authority Loan Agreement”) between the Authority and SunTrust Bank (the “Bank”) to borrow \$740,000 from the Bank. To evidence the loan from the Bank to the Authority, the Authority will deliver to the Bank its \$740,000 Authority Promissory Note dated as of January 29, 2008 (the “Authority Note”). The Authority Note will be secured by the payments to be made to the Authority under the VABB Documents, as defined below. If the payments to be received by the Authority under the VABB Documents are not sufficient, the County has agreed, subject to

annual appropriation, to make certain payments to the Authority under a Moral Obligation Agreement dated as of January 29, 2008 (the "Moral Obligation Agreement") between the Authority and the County. Together, the Authority Loan Agreement, the Authority Note and the Moral Obligation Agreement are referred to herein as the "Authority Documents."

To save VABB the considerable time and expense of negotiating and documenting a loan from a private lender, the Authority will encourage and support VABB by entering into the Authority Documents and by using the proceeds from the loan received under the Authority Loan Agreement to make a loan to VABB. The proceeds of the loan to VABB in the principal amount of \$740,000 will be used to acquire certain of the capital assets necessary to establish the Network, to pay capitalized interest on the Authority Note and the VABB Note, as defined below, and to pay the costs of issuing the Authority Note. Such loan will be made pursuant to this VABB Loan Agreement. Such loan will be evidenced by a \$740,000 VABB Promissory Note from VABB to the Authority dated as of January 29, 2008 (the "VABB Note"). In this VABB Loan Agreement, VABB will grant a security interest to the Authority in the assets acquired with the proceeds from the loan to VABB. The priority and other matters involving certain security interests granted by VABB will be governed by a Consent and Intercreditor Agreement dated as of January 29, 2008 (the "Intercreditor Agreement") among VABB, the Authority, [REDACTED FROM FOIA], [REDACTED FROM FOIA], [REDACTED FROM FOIA] and [REDACTED FROM FOIA]. Together, the VABB Loan Agreement, the VABB Note, the Intercreditor Agreement and the Network Agreement are referred to herein as the "VABB Documents."

The Authority is entering into this VABB Loan Agreement and is making the loan to VABB evidenced by the VABB Note pursuant to Section 15.2-5431.12 of the Act. The Authority has determined that it is necessary and expedient to enter into this VABB Loan Agreement and to make the loan evidenced by the VABB Note to perform its goal of providing the Network throughout the County and to accomplish the other purposes of the Authority set forth in the Act, acting in concert with VABB.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

Section 1. Definitions.

All capitalized words and terms used in this VABB Loan Agreement have the meanings set forth in Section 1 of the Authority Loan Agreement. In addition, the following words and terms have the following meanings in this VABB Loan Agreement unless the context clearly requires otherwise:

"Default" means the occurrence of any event or condition described in Section 10.

"Equipment" means any radios, antennas, ethernet ports, fiber optic cables, wires or other transmitting, receiving or other equipment owned and maintained by VABB and used in the deployment and operation of the Network, together with all additions and accessions thereto

and all replacement parts and substitutions therefor, acquired with the proceeds of the VABB Note under this VABB Loan Agreement, including all instruments, documents, securities, cash, property and other evidence of or proceeds from any of the foregoing, owned by VABB or in which VABB has an interest.

“Indebtedness” means all of the indebtedness and obligations secured by the grant of a security interest in the Equipment granted pursuant to this VABB Loan Agreement, together with any and all modifications, renewals and extensions thereof and substitutions therefor, as more fully described in Section 8.

Section 2. Rules of Construction.

The rules of construction set forth in Section 2 of the Authority Loan Agreement will apply with equal force to this VABB Loan Agreement as if they were set forth in and referred to this VABB Loan Agreement.

Section 3. VABB Loan; Investment and Use of Proceeds.

The Authority hereby agrees, subject to the terms and conditions of this VABB Loan Agreement, to make a loan to VABB in the principal amount of \$740,000. The Authority will make such loan from the proceeds of the sale of its Authority Note to the Bank pursuant to the Authority Loan Agreement.

The Authority will deposit the proceeds of the Authority Note into the Account. As further described in Section 4, the Authority agrees that it will disburse moneys from the Account from time to time only for the purpose of paying the capital costs of the Network, the capitalized interest on the Authority Note and the VABB Note or the costs of issuing the Authority Note.

Section 4. Procedure for Disbursements.

(a) **Requisition for Disbursement:** At least three business days prior to each requested disbursement from the Account, VABB shall provide a completed Requisition Certificate to the Authority in the form attached hereto as Exhibit B.

VABB may request disbursements from the Account for the actual costs of the acquisition and installation of Equipment necessary for the Network. Each Requisition Certificate shall describe the Equipment being acquired and installed, shall provide serial numbers or other identifying characteristics and shall indicate where such Equipment will be located or installed.

VABB acknowledges and agrees that, in addition to disbursements related to the acquisition and installation of the Equipment, the Authority may disburse funds from the Account to pay the accrued interest on the VABB Note and the Authority Note, when due, to pay the costs incurred by the Authority in connection with the issuance of the Authority Note, and, in the Authority’s sole discretion, to pay the costs incurred by VABB in connection with the

issuance of the VABB Note (but not in connection with the negotiation of the Network Agreement or with litigation involving VABB). The Authority will report to VABB each disbursement made by the Authority for such purposes.

VABB agrees to submit no more than three Requisition Certificates per month. The Authority reserves the right to refuse to disburse funds from the Account to VABB for any items determined by the Authority to not be Equipment, or otherwise determined by the Authority to not be necessary or appropriate for the operation of the Network.

(b) **Reaffirmation:** Each request for a disbursement by VABB will constitute a reaffirmation by VABB of the representations and warranties set forth in Section 6.

(c) **Completion Certification; Excess Moneys:** When VABB has completed the acquisition of the Equipment necessary for Phase I of the Network, VABB shall provide to the Authority a certificate stating the date of completion of Phase I of the Network and what items of the cost of the Equipment, if any, have not been paid and for the payment of which moneys should be reserved in the Account. Upon such certification, the balance of any moneys remaining in the Account in excess of the amount to be reserved for payment of unpaid items of the cost of the Equipment shall be applied by the Authority to the prepayment of the principal of the VABB Note and the Authority Note on the earliest date that such prepayment shall be allowed under the provisions of this VABB Loan Agreement and the Authority Loan Agreement.

(d) **Right to Refuse:** The Authority shall not be obligated to make any disbursement under this Agreement after December 1, 2010. In addition, notwithstanding anything contained herein to the contrary, the Authority has the right to refuse to disburse funds hereunder if a Default has occurred and is continuing.

Section 5. Maturity Date; Interest Rate; Prepayments.

(a) **Maturity Date:** VABB shall repay in full the VABB Note, including outstanding principal, accrued interest and unpaid fees and other amounts owing by VABB under this VABB Loan Agreement, by no later than December 1, 2012.

(b) **Interest Rate; Interest Payment Dates:** The interest rate per year on the outstanding principal balance of the VABB Note shall be 5.59%. Interest shall be calculated on the basis of a year of 360 days and twelve 30-day months.

Accrued interest is payable in arrears on each December 1, commencing December 1, 2008. Further, accrued interest on any principal amount being prepaid will be paid on such prepayment date.

(c) **Application of Payments:** Payments by VABB under the VABB Note shall be applied *first* to the accrued interest on the VABB Note and *second* to the principal of the VABB Note.

(d) **Payments and Prepayments:** The VABB Note may not be prepaid in whole or in part at any time prior to December 1, 2009. The VABB Note may be prepaid in whole or in part at any time or from time to time on or after December 1, 2009. The prepayment price shall be 100% of the principal amount being prepaid, plus accrued interest on such amount to the prepayment date, without penalty or premium.

(e) **Late Fee:** If any payment due under the VABB Note is more than ten (10) days past due, VABB promises to pay the Authority immediately upon demand a late fee in the amount of five percent (5%) of any such payment.

Section 6. Representations and Warranties. Except as VABB may have disclosed to the Authority to the contrary in writing, VABB represents and warrants to the Authority that:

(a) **Capacity and Standing; Location of Books:** VABB is a limited liability company duly organized and validly existing under the laws of the Commonwealth, that it is duly qualified and in good standing in every other state in which the nature of its business shall require such qualification, and that it is duly authorized by all required action to make and perform its obligations under the VABB Documents. VABB has its principal place of business in the Commonwealth.

As of the date of this VABB Loan Agreement, the books and records relating to the Equipment are kept at 14114 Lover's Lane, Suite 135, Culpeper, Virginia 22701.

(b) **No Violation of Other Agreements:** The execution of the VABB Documents, and the performance by VABB of its obligations thereunder, will not violate any provision of its organizational documents, or any law or regulation, other agreement, indenture, note, or other instrument binding upon VABB, or give cause for the acceleration of any obligations of VABB.

(c) **Governmental Authority:** All authority from and approval by any governmental body, commission or agency, whether federal, state or local, necessary to the making, validity, or enforceability of the VABB Documents has been obtained.

(d) **Asset Ownership:** When acquired, VABB has or will have good and marketable title to all of the Equipment, free and clear of security interests, pledges, liens, and all other encumbrances except those created under this VABB Loan Agreement.

(e) **Discharge of Liens and Taxes:** VABB has filed, paid, and/or discharged all taxes or other claims to date which may become a security interest, pledge, lien or other encumbrance on any of the Equipment, and will file, pay and/or discharge all such taxes or claims that may arise in the future, except to the extent that such taxes or other claims are being appropriately contested in good faith and for which an adequate reserve for the payment thereof is being maintained.

(f) **Litigation:** There is no pending or threatened action or proceeding against or affecting VABB before any court, commission or governmental agency, whether federal, state or

local, or arbitration which may materially adversely affect the financial condition or business of VABB, the Equipment or the Network, or the ability of VABB to perform its obligations under the VABB Documents.

(g) **Binding and Enforceable:** The VABB Documents constitute valid and binding obligations of VABB and are enforceable in accordance with their terms, except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally.

(h) **No Representations by Authority:** VABB understands that the Authority has made no representation or warranty that VABB will have quiet and peaceful possession of the Equipment, except that the Equipment is free from encumbrances done, made or knowingly suffered by the Authority or anyone claiming by, through or under the Authority, except to the extent created herein. VABB recognizes that neither the Authority nor the County makes any representation or warranty with respect to the Equipment or the Network, including its design, construction, funding or function, or the suitability of any item of Equipment for its intended purpose.

Except as the Authority may have expressly informed VABB to the contrary, the Authority represents and warrants to VABB that:

(w) **Litigation:** There is no pending or threatened action or proceeding against or affecting the Authority before any court, commission or governmental agency, whether federal, state or local, or arbitration which may materially adversely affect the financial condition or business of the Authority, the Equipment or the Network or the ability of the Authority to perform its obligations under the VABB Documents to which it is a party.

(x) **Binding and Enforceable:** The VABB Documents to which the Authority is a party constitute valid and binding obligations of the Authority and are enforceable in accordance with their terms, except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally.

(y) **Status of Authority:** The Authority is, on the date hereof, a duly created and validly existing public body politic and corporate of the Commonwealth of Virginia, has the power to enter into the transactions contemplated by this VABB Loan Agreement and to carry out its obligations under this VABB Loan Agreement and, by proper action, has duly authorized the execution and delivery of, and the performance under, this VABB Loan Agreement.

(z) **No Other Defaults:** To the best of its knowledge, the Authority is not in default in the payment of the principal of or interest on any indebtedness for borrowed money and is not in default under any instrument under and subject to which any indebtedness has been incurred, and no event has occurred and is continuing under the provisions of any such instrument which, with the lapse of time or giving of notice, or both, would constitute an event of default thereunder.

Section 7. Affirmative Covenants.

Until such time as the VABB Note has been repaid in full, VABB shall, at all times:

(a) **Maintain Existence; Name:** Preserve and maintain its existence and good standing as a Virginia limited liability company, and qualify and remain qualified as a foreign entity in each jurisdiction in which such qualification is required.

Except to the extent permitted by the Network Agreement, VABB shall not merge with or consolidate into another entity, reorganize, dissolve, or terminate its existence, pledge, lease or otherwise dispose of all or substantially all of its assets, nor assign any portion or all of its obligations hereunder, without the prior written consent of the Authority.

Further, VABB will not change its name without giving the Authority at least thirty (30) days' prior written notice.

(b) **Maintain Records:** Keep adequate records and books of account, in which complete entries will be made in accordance with generally accepted accounting principles consistently applied, reflecting all financial transactions of VABB or relating to the Equipment.

VABB will not change the location of its records and books of account without giving the Authority at least thirty (30) days' prior written notice.

(c) **Maintain Properties; Status of Equipment:** Maintain, keep and preserve all of its properties (tangible and intangible) necessary or useful in the conduct of its business, including the Equipment and the Network, in good working order and condition, ordinary wear and tear excepted.

VABB agrees that no portion of the Equipment shall become a fixture unless the Authority expressly agrees otherwise in writing.

(d) **Conduct of Business:** Continue to engage in an efficient, prudent and economical manner in a business of the same general type as now conducted.

(e) **Maintain Insurance:** Maintain insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business, which insurance may provide for a commercially reasonable deductible. Notwithstanding the generality of the foregoing, VABB will continuously insure the Equipment with a responsible company or companies reasonably satisfactory to the Authority against fire (with extended coverage) in the full insurable value of the Equipment, and against such other casualties in such amounts as the Authority shall reasonably require. The Authority shall be named as an additional insured or loss payee on all policies that apply to the Equipment, and VABB shall deliver certificates of insurance at closing evidencing the same. All such insurance policies relating to the Equipment shall provide, and the certificates shall state, that no policy will be terminated unless at least thirty (30) days' prior

written notice has been given by the insurer to the Authority. These insurance requirements are in addition to those set forth in the Network Agreement.

(f) **Comply With Laws:** Comply in all respects with all applicable laws, rules, regulations, and orders including, without limitation, paying before the delinquency of all taxes, assessments, and governmental charges imposed upon it or upon its property, and all environmental laws.

(g) **Right of Inspection:** Permit the officers and authorized representatives of the Authority, at any reasonable time, to examine and make copies of the records and books of account of VABB, to visit the locations at which the Equipment is located, and to discuss such matters with any officers, directors, members and VABB's independent accountant as the Authority deems necessary.

(h) **Reporting Requirements:** Furnish to the Authority:

(i) *Semiannual Financial Statements:* As soon as available and not more than thirty (30) days after the end of the second fiscal quarter, and as soon as available and not more than thirty (30) days after the end of each fiscal year, balance sheets, statements of income, and retained earnings for VABB for and as of the end of such second fiscal quarter or fiscal year and a statement of changes in the financial position, all in reasonable detail, and all prepared by a certified public accountant in accordance with generally accepted accounting principles consistently applied.

As each semiannual report is provided in accordance with the prior paragraph, VABB will furnish to the Authority a report stating whether there has occurred any Default or any event which with the passage of time, or the giving of notice, or both, would constitute a Default. If such Default or event has occurred, the report shall further state what actions VABB has taken, is taking or proposes to take to cure such Default or event.

(ii) *Casualty Loss:* Prompt notice of any fire, theft, water damage, vandalism or other damage to or loss of the Equipment or any material part thereof.

(iii) *Notice of Litigation:* Prompt notice of any complaint, action, suit or proceeding before any court or governmental agency of any type which, if determined adversely, could have a material adverse effect on the financial condition, properties or operations of VABB, the Equipment or the Network.

(iv) *Other Information:* Such other information as the Authority may from time to time reasonably request with respect to VABB, the Equipment or the Network.

(i) **Payment of Authority's Fees and Expenses:** VABB shall be liable for, and agrees to pay to the Authority, any and all expenses, including reasonable attorneys' fees, reasonably incurred or paid by the Authority in connection with the VABB Documents, including the expenses of protecting or enforcing its rights under this VABB Loan Agreement.

At its option, after the occurrence of a Default and during the continuance thereof, the Authority may discharge taxes, liens, security interests or other encumbrances on the Equipment and may pay for the repair or damage to the Equipment, the maintenance and preservation thereof and for insurance thereon. VABB agrees to reimburse the Authority on demand for any payments so made and, until such reimbursement, to pay interest thereon at the annual rate equal to 8.59% per year from date of the payment until reimbursement therefor, which reimbursement and interest shall be added to the Indebtedness and shall be secured by this VABB Loan Agreement.

(j) **Acquisition and Maintenance of Letter of Credit:** VABB shall take all steps necessary to comply with Section 30 of the Network Agreement involving the acquisition and maintenance of a Letter of Credit, as defined therein. Until the Letter of Credit is issued, VABB shall, upon the Authority's request, provide written information to the Authority regarding the identity of the financial institutions asked to issue the Letter of Credit, the response of such financial institutions and, if applicable, the terms and conditions proposed by such financial institutions for the issuance of the Letter of Credit.

Section 8. Security Interest.

(a) **Grant of Security Interest:** VABB hereby grants to the Authority a security interest in the Equipment. Proceeds of the Equipment shall also include any proceeds of insurance against fire or physical damage, whether or not such policy shall contain an endorsement in favor of the Authority.

(b) **Secured Indebtedness:** The security interests in the Equipment granted in this VABB Loan Agreement are granted to the Authority to secure to the Indebtedness, including: (a) the payment and performance of all indebtedness, obligations and liabilities now or hereafter owing by VABB under the VABB Documents, including all interest, fees and penalties; (b) all reasonable expenditures by the Authority for taxes, insurance, maintenance and preservation of the Equipment, and all reasonable costs and expenses incurred by the Authority in the collection and enforcement of any of the VABB Documents, including, without limitation, reasonable attorneys' fees; and (c) all reasonable expenses of the Authority, including, without limitation, reasonable attorneys' fees, incident to the enforcement of all obligations of VABB by any action or participation in, or in connection with a case or proceeding under, the Federal Bankruptcy Code, or any successor statute thereto.

(c) **Location of Equipment:** With each Requisition Certificate, VABB will indicate to the Authority the intended location of each item of Equipment. It is intended that all such Equipment will be located in the County. VABB may change the location of or move the Equipment freely within the County. No change in the location of the Equipment shall be made unless VABB has given the Authority thirty (30) days' prior written notice of such change. Written approval of the Authority is required before VABB may locate any Equipment outside of the County.

(d) **No Prior Encumbrances or Prior Financing Statements:** Except as otherwise disclosed to the Authority in writing on or prior to the date of this VABB Loan Agreement, VABB has not previously assigned, encumbered or mortgaged any Equipment (other than encumbrances

and liens which have been terminated), and the Equipment is not, and will not be upon future acquisition, subject to a prior security interest or lien in favor of any person. VABB will defend the Equipment against all claims and demands of all persons at any time claiming any interest therein (other than those persons disclosed to the Authority in writing in accordance with the preceding sentence).

No financing statement describing the Equipment or any part thereof, or covering any proceeds of the Equipment, is on file in any public office except those in favor of the Authority created in accordance with this VABB Loan Agreement and those disclosed to the Authority by VABB in writing on or prior to the date of this VABB Loan Agreement.

VABB shall at all times comply with the terms and conditions imposed upon it by the Intercreditor Agreement and cause the other parties thereto (other than the Authority) to comply with the terms and conditions imposed upon those other parties by the Intercreditor Agreement.

(e) **Financing Statements:** VABB will take any and all action necessary from time to time, without notice from the Authority, to perfect and keep perfected the Authority's security interest in the Equipment. Without limiting the foregoing, VABB will execute financing statements and continuation statements in form reasonably satisfactory to the Authority, and VABB will reimburse the Authority for all reasonable expenses incurred from time to time in the filing of financing statements, continuation statements and termination statements and in verifying the status of filing records in appropriate public filing offices (with such verification to be limited to once a year unless a Default has occurred). VABB agrees that the Authority may file a carbon, photographic copy or other reproduction of any financing statement or continuation statement.

(f) **Disposition of Equipment:** If no Default shall have occurred and be continuing beyond any applicable cure period, VABB may sell or otherwise dispose of Equipment in the ordinary course of business, but only with the prior written consent of the Authority and only in accordance with the terms and conditions imposed upon it by the Intercreditor Agreement. Upon such sale or other disposition, the Authority shall execute and deliver to VABB, or to such other person or persons as VABB shall reasonably designate, all termination statements and similar documents prepared by VABB which VABB shall reasonably request to evidence the release of the lien and security interest created hereunder with respect to any such Equipment.

(g) **Remedies Upon Default; Attorney-in-Fact:** Upon any Default and at any time thereafter, the Authority, at its option, may proceed to enforce payment of the Indebtedness and exercise any and all of the rights and remedies provided by the Uniform Commercial Code, as well as all other rights and remedies possessed by the Authority. The Authority will give VABB reasonable notice of the time and place of any public sale of the Equipment or any part thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of VABB shown in Section 12 at least five (5) days before the time of the sale or disposition, but nothing contained herein shall be construed to mean that any other notice of a shorter period of time does not constitute reasonable notice for the sale of the Equipment, or any

part thereof. Expenses of retaking, holding, preparing for sale, selling or the like shall include, without limitation, the Authority's reasonable attorneys' fees. Upon a Default, VABB shall upon request by the Authority assemble the Equipment or any designated part thereof and make it available to the Authority at such place as is designated by the Authority.

VABB hereby irrevocably constitutes and appoints the Authority as its true and lawful attorney-in-fact (with full power of substitution), and without the necessity of any further act or action on the part of VABB, upon the occurrence of a Default (i) to take any and all action with respect to the Equipment in the name and on behalf of VABB, and (ii) to execute and deliver in the name and on behalf of VABB any and all financing statements, assignments of vehicle titles and liens and other documents, which the Authority determines are necessary or desirable to perfect or otherwise protect and preserve the security interests granted hereunder and/or to convert the Equipment into cash, all at the sole cost and expense of VABB. The rights and powers granted the Authority by this appointment include, without limitation, the right and power to execute loss claims and other applications for payment of benefits under any insurance policy in the name of VABB, to receive all moneys and endorse drafts, checks, and other instruments for the payment of any proceeds of any insurance or in order to collect any return of unearned premiums, and to change any and all insurance coverages, terms, amounts or insurers. The Authority shall not be obligated to do any of the acts or exercise any of the powers hereinabove authorized, but, if the Authority elects to do any such act or exercise any such power, it shall not be accountable for more than it actually receives as a result of such exercise of power and in any event the Authority shall not be responsible to VABB except for loss or damage resulting from its willful misconduct or gross negligence. VABB hereby ratifies and approves all acts of its attorney-in-fact hereby appointed. This power of attorney is coupled with an interest and shall be irrevocable so long as this VABB Loan Agreement remains in effect or any of the Indebtedness secured hereby shall remain unpaid.

(h) **Transfer of Title in Full Satisfaction:** In the event the Transition Plan (defined in Section 51 of the Network Agreement) is implemented as set forth in Section 51 of the Network Agreement and upon concurrent written request by the Authority, VABB shall transfer all its rights, interest and title to and in the Equipment to, at the Authority's option, the Authority or to the succeeding provider. Such Equipment transfer shall: (i) fully satisfy, discharge and release VABB from the VABB Note, Indebtedness, security interest and all other encumbrances under this VABB Loan Agreement and under the Uniform Commercial Code; and (ii) be in lieu of any and all Authority rights, remedies and interests (including without limitation under this VABB Loan Agreement or under the Uniform Commercial Code) to auction, sell, liquidate or otherwise dispose of the Equipment to satisfy or enforce the VABB Note, Indebtedness, security interest and all other encumbrances under this VABB Loan Agreement and under the Uniform Commercial Code. In the event the Authority invokes such transfer, VABB shall also then use reasonable efforts in good faith to assist the Authority in entering into an agreement with the succeeding provider whereby the succeeding provider agrees to perform VABB's remaining payment obligations under this VABB Loan Agreement and the VABB Note. Notwithstanding the above, implementation of the Transition Plan by itself will neither terminate VABB's obligations under the Letter of Credit obtained pursuant to Section 30 of the Network Agreement, nor limit the Authority's rights to make draws thereon.

Section 9. Indemnification by VABB.

VABB shall indemnify and save harmless the Authority and the County from and against all liabilities, claims, damages, penalties, fines, losses, costs and expenses (including, without limitation, attorneys' fees) arising from (i) any personal injury or damage to property occurring on or about the Equipment or the Network, either while the Equipment or Network is owned by VABB or caused by or related to any action, inaction, acquiescence or direction by or on behalf of VABB, (ii) the breach by VABB of any of its obligations under any of the VABB Documents, and (iii) the exercise and performance by the Authority or the County of their powers and duties under the VABB Documents or the Authority Documents (including costs paid by the Authority arising from the Authority's efforts to clear title due to VABB's bankruptcy or insolvency); *provided*, that VABB shall not be required to indemnify the Authority or the County against acts which are the result of their respective willful misconduct or gross negligence. If any action, suit or proceeding is brought against the Authority or the County for which VABB is required to provide indemnification under this Section 9, VABB, upon request and at its expense, shall defend such action, suit or proceeding, or cause the same to be defended by counsel designated by VABB and approved by the Authority or the County. Such approval shall not be withheld unreasonably and shall not be required in the case of defense by counsel designated by any insurance company undertaking such defense pursuant to any applicable policy of insurance. The obligations of VABB under this Section 9 shall survive payment of the VABB Note. References in this Section 9 to the Authority or the County shall be deemed to include references to their supervisors, directors, officers, employees and agents.

Section 10. Default.

Each of the following shall constitute a "Default" under this VABB Loan Agreement:

(a) **Payment Default:** failure by VABB to pay to the Authority when due any payment of principal or interest required to be paid under the VABB Note and the continuation of such failure for a period of ten (10) days;

(b) **Nonpayment Default:** failure by VABB to observe and perform any other covenant, condition or agreement contained herein or in any other document or agreement executed in connection herewith on its part to be observed or performed for a period of 30 days after written notice is given to VABB specifying such failure and requesting that it be remedied; *provided*, that, if the failure stated in such notice cannot be corrected within such 30-day period, the Authority will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by VABB within the applicable period and is diligently pursued until the default is corrected;

(c) **Adverse Financial Condition:** The making by VABB of any general assignment or general arrangement for the benefit of creditors; or the filing by or against VABB of a petition to have VABB adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy unless the same is dismissed within sixty (60) days; or the appointment of a trustee or a receiver to take possession of substantially all of VABB's assets

located at its facilities or of VABB's interest in the VABB Documents, where possession is not restored to VABB within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of VABB's assets located at its facilities or of VABB's interest in the VABB Documents, where that seizure is not discharged within thirty (30) days; or

(d) **Untrue Representations or Warranties:** determination by the Authority that any representation or warranty made by VABB herein, in any VABB Document or in any other document executed in connection herewith (including any representation or warranty made by VABB to its knowledge or based upon its belief) was untrue in any material respect when made.

Section 11. Remedies on Default.

Whenever any Default shall have occurred and be continuing, the Authority shall have the right, at its sole option without any further demand or notice, to take any one or any combination of the following remedial steps insofar as the same are accorded to the Authority by applicable law:

(a) **Acceleration:** by notice to VABB, declare the entire unpaid principal amount of the VABB Note, all interest accrued and unpaid thereon and all amounts payable under this VABB Loan Agreement to be forthwith due and payable, whereupon the VABB Note, all such accrued interest and all such amounts shall become and be forthwith due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by VABB;

(b) **Actions Upon Equipment:** take any and all actions with respect to the Equipment and the security interests created under this VABB Loan Agreement, as described in Section 8 or as permitted by the Virginia Uniform Commercial Code; and

(c) **Other Remedies:** proceed by appropriate court action to enforce specific performance by VABB of the applicable covenants of this VABB Loan Agreement and the VABB Note or to recover for the breach thereof, including the payment of all amounts due from VABB.

VABB shall pay or repay to the Authority all costs of such action or court action, including, without limitation, reasonable attorneys fees.

No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this VABB Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. All remedies herein conferred upon or reserved to the Authority shall survive the termination of this VABB Loan Agreement.

Section 12. Notices.

All notices, certificates, requests, demands and other communications provided for hereunder shall be in writing and shall be (a) personally delivered, (b) sent by first class United States mail, (c) sent by overnight courier of national reputation, or (d) transmitted by facsimile, in each case addressed to the party to whom notice is being given at its address as set forth below and, if sent by facsimile, transmitted to that party at its facsimile number set forth below or, as to each party, at such other address or facsimile number as may hereafter be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 12. All such notices, requests, demands and other communications shall be deemed to have been given on (a) the date received if personally delivered, (b) when deposited in the mail if delivered by mail, (c) the date sent if sent by overnight courier, or (d) the date of transmission if delivered by facsimile.

VABB: Virginia Broadband, L.L.C.
Attention: Chief Executive Officer
14115 Lover's Lane, Suite 135
Culpeper, Virginia 22701
Telephone: (540) 829-1700
Facsimile: (540) 825-1243

The Authority: King George County Wireless
Authority
Attention: Secretary-Treasurer
10459 Courthouse Drive, Suite 200
King George, Virginia 22485
Telephone: (540) 775-9181
Facsimile: (540) 775-5248

Section 13. Miscellaneous.

(a) **Further Assurance and Corrective Actions:** VABB hereby agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further acts, instruments, conveyances, transfers and assurances, as the Authority reasonably deems necessary or advisable for the implementation, correction, confirmation or perfection of this VABB Loan Agreement and the VABB Note and any rights of the Authority hereunder or thereunder.

(b) **Binding Effect:** This VABB Loan Agreement and the VABB Note shall inure to the benefit of and shall be binding upon VABB, the Authority and their respective successors and assigns.

(c) **Severability:** In the event any provision of this VABB Loan Agreement or the VABB Note shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or thereof.

(d) **Amendments:** To the extent permitted by law, the terms of this VABB Loan Agreement and the VABB Note shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

(e) **Execution in Counterparts:** This VABB Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument, and either of the parties hereto may execute this VABB Loan Agreement by signing any such counterpart.

(f) **Applicable Law.** This VABB Loan Agreement and the VABB Note shall be governed by and construed in accordance with the laws of the Commonwealth.

(g) **Entire Agreement.** The Authority Documents and the VABB Documents constitute all of the agreements between or among the Bank, the Authority, the County and VABB with respect to a loan from the Bank to the Authority and from the Authority to VABB to finance certain components of the Network. There are no understandings, agreements, representations or warranties, express or implied, not specified therein regarding such loans.

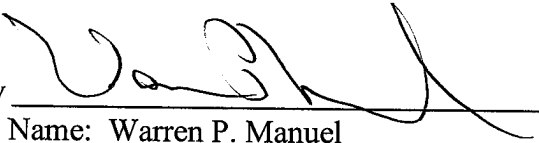
(h) **Term.** Except as otherwise set forth herein, this VABB Loan Agreement (together with all security interests and obligations set forth herein and under the VABB Note) becomes effective on the date of this VABB Loan Agreement and expires upon VABB's performance in full of its obligations hereunder, including its payment obligations under Section 5 and the VABB Note.

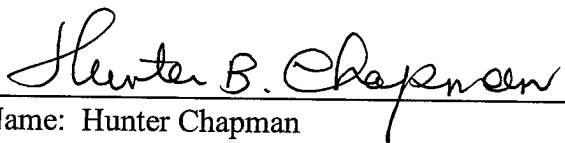
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IN WITNESS WHEREOF, the parties hereto have executed this VABB Loan Agreement in their respective names by their duly authorized representatives, all as of the date first written above.

VABB:

VIRGINIA BROADBAND, L.L.C.

By 
Name: Warren P. Manuel
Title: Chief Executive Officer and Manager

By 
Name: Hunter Chapman
Title: Manager

The Authority:

**KING GEORGE COUNTY WIRELESS
AUTHORITY**

By _____
Name: Cedell Brooks, Jr.
Title: Chairman

By _____
Name: R. Bryan David
Title: Secretary-Treasurer

Exhibit A – VABB Promissory Note
Exhibit B – Requisition Certificate

1651324v5
043586.002

IN WITNESS WHEREOF, the parties hereto have executed this VABB Loan Agreement in their respective names by their duly authorized representatives, all as of the date first written above.

VABB:

VIRGINIA BROADBAND, L.L.C.

By _____

Name: Warren P. Manuel

Title: Chief Executive Officer and Manager

By _____

Name: Hunter Chapman

Title: Manager


The Authority:

**KING GEORGE COUNTY WIRELESS
AUTHORITY**

By  _____

Name: Cedell Brooks, Jr.

Title: Chairman

By  _____

Name: R. Bryan David

Title: Secretary-Treasurer

Exhibit A – VABB Promissory Note
Exhibit B – Requisition Certificate

1651324v5
043586.002

Original Principal Amount: \$740,000

Date: January 29, 2008

VABB PROMISSORY NOTE

For value received, the undersigned **VIRGINIA BROADBAND, L.L.C.**, a Virginia limited liability company, and its successors or assigns ("VABB") promises to pay to the **KING GEORGE COUNTY WIRELESS AUTHORITY**, a public body politic and corporate of the Commonwealth of Virginia, or order (the "Authority"), at 10459 Courthouse Drive, Suite 200, King George, Virginia 22485 (or such other place or places that may be hereafter designated by the Authority), the principal amount of **SEVEN HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$740,000.00)**, or so much thereof as may be outstanding from time to time, in immediately available coin or currency of the United States of America.

Interest shall accrue from the date of this VABB Note on the unpaid principal balance at the rate of 5.59% per year. Accrued interest is payable in arrears on each December 1, commencing December 1, 2008. Further, accrued interest on any principal amount being prepaid will be paid on such prepayment date. Interest shall be calculated on the basis of a year of 360 days and twelve 30-day months.

Principal is payable on December 1, 2012. This VABB Note is subject to prepayment upon the terms and conditions stated in the VABB Loan Agreement, as defined below. Assuming no pre-payments, principal and interest shall be payable on the dates and in the amounts set forth on the attached Schedule.

Further, VABB promises to pay to the Authority, or order, immediately upon demand a late fee in the amount of five percent (5%) of any installment past due for more than ten (10) days.

All principal and accrued interest and other amounts outstanding in connection with the loan evidenced by this VABB Note or required to be paid in accordance with the VABB Loan Agreement dated as of January 29, 2008 (the "VABB Loan Agreement") between VABB and the Authority are payable in full on December 1, 2012, the final maturity date of this VABB Note.

This VABB Note is given by VABB to evidence the loan made by the Authority to VABB pursuant to the VABB Loan Agreement. All of the terms, conditions and covenants of the VABB Loan Agreement are expressly made a part of this VABB Note by reference in the same manner and with the same effect as if set forth herein at length. Any holder of this VABB Note is entitled to the benefits of and remedies provided in the VABB Loan Agreement. Any capitalized term used, but not defined, herein will have the meaning given to such term in the VABB Loan Agreement.

The issuance of this VABB Note and the execution and delivery of the VABB Loan Agreement by VABB were duly authorized by a majority of the managers of VABB. This VABB Note is being issued by VABB, and the VABB Loan Agreement is being executed and delivered by VABB, pursuant to the general powers of VABB and under the Virginia Wireless Service Authorities Act, Chapter 54.1, Title 15.2 of the Code of Virginia of 1950, as amended (the "Act").

In the event of the occurrence and continuance of a Default, then this VABB Note shall immediately become due and payable, at the option of the Authority.

The obligations of VABB hereunder and under the VABB Loan Agreement are general obligations of VABB payable from any of its revenues or assets.


VABB waives presentment, demand, protest and notices of every kind and assents to any one or more extensions or postponements of the time of payment or any other indulgences, to any substitutions, exchanges or releases of collateral, and to the additions or releases of any other parties or persons primarily or secondarily liable. Further, VABB hereby waives all exemptions.

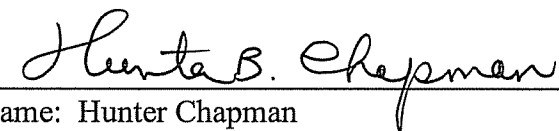
All obligations of VABB under this VABB Note and the VABB Loan Agreement shall bind its successors or assigns. All obligations of VABB under this VABB Note shall expire upon VABB's performance in full of its obligations under this VABB Note and its payment obligations under Section 5 of the VABB Loan Agreement.

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IN WITNESS WHEREOF, the undersigned, on the day and year first written above, has caused this VABB Note to be executed by its duly authorized members under seal.

VIRGINIA BROADBAND, L.L.C.

By 
Name: Warren P. Manuel
Title: Chief Executive Officer and Manager

By 
Name: Hunter Chapman
Title: Manager

1651325v5
043586.002

**ANTICIPATED DEBT SERVICE SCHEDULE
(ASSUMING NO PREPAYMENTS)**

Payment Date	Principal	Interest	Payment Due
December 1, 2008		\$ 34,701.48	\$ 34,701.48
December 1, 2009		41,366.00	41,366.00
December 1, 2010		41,366.00	41,366.00
December 1, 2011		41,366.00	41,366.00
December 1, 2012	<u>\$740,000</u>	<u>41,366.00</u>	<u>781,366.00</u>
Totals	\$740,000	\$200,165.48	\$940,165.48

**REQUISITION CERTIFICATE FOR
DISBURSEMENT FROM ACCOUNT**

King George County Wireless Authority
King George, Virginia

Requisition No.: _____

Date: _____

Amount Requested: \$ _____

On behalf of Virginia Broadband, L.L.C. ("VABB"), I hereby make this request under the VABB Loan Agreement dated as of January 29, 2008 (the "VABB Loan Agreement") between VABB and the King George County Wireless Authority (the "Authority"). Capitalized terms used but not defined herein will have the meanings as set forth or used in the VABB Loan Agreement. I hereby request a disbursement from the Account in the Amount Requested above and make the following certifications:

(a) the Amount Requested (i) has been paid by VABB for costs related to the Equipment, and will be used to reimburse VABB for such payment, or (ii) is owed by VABB to vendors, suppliers or contractors and will be used to pay the acquisition or installation charge for Equipment, all as detailed on the attached Schedule;

(b) the representations and warranties made by VABB in the VABB Loan Agreement remain true and correct on the date of this requisition;

(c) on the date of this requisition, no Default under any VABB Document has occurred and remains uncured;

(d) each item listed in this requisition is, or is related to, an item of Equipment being procured in the furtherance of the development of the Network and each item is a proper charge against the Account, and no item listed in this requisition has been the basis for a prior requisition which has been paid;

(e) if this requisition includes an item related to Equipment, such Equipment was actually furnished or installed in or about the development of the Network and is not subject to any lien or security interest, except as previously disclosed to the Authority in writing in accordance with the VABB Loan Agreement; and

(f) if this requisition includes costs for labor or construction to install Equipment, the work was actually performed.

VABB has attached to this requisition an invoice or other appropriate evidence of the obligations described in this requisition.

Representative of Virginia Broadband, L.L.C.

**SCHEDULE OF INVOICES TO BE PAID OR
COSTS TO BE REIMBURSED FROM ACCOUNT**

Total Amount Requested on This Requisition: \$ _____

First Payee: _____

Amount: \$ _____

Asset or Service Provided: _____

Serial Numbers of Equipment or Other Identifying Characteristics, if any: _____

Proposed Location of Equipment: _____

Method of Payment: // Check // Wire Transfer

Address for Mailing Check or Wire Transfer Instructions:

Second Payee: _____

Amount: \$ _____

Asset or Service Provided: _____

Serial Numbers of Equipment or Other Identifying Characteristics, if any: _____

Proposed Location of Equipment: _____

Method of Payment: // Check // Wire Transfer

Address for Mailing Check or Wire Transfer Instructions:

Third Payee: _____

Amount: \$ _____

Asset or Service Provided: _____

Serial Numbers of Equipment or Other Identifying Characteristics, if any: _____

Proposed Location of Equipment: _____

Method of Payment: // Check // Wire Transfer

Address for Mailing Check or Wire Transfer Instructions:

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Exhibit D: Network Description

Overview

King George County is roughly triangle shaped with the bulk of the population located on a shallow crescent which spans from the western tip of the triangle to the northern tip of the triangle. The county government, most of the schools, and an important concentration of the population base is located roughly in the center of the county.

[REDACTED FROM FOIA]

King George owns four water towers (three of which will be used in phase-1) and owns or controls physical space on a further six towers. The three water towers and the six commercial towers spaced around the Phase-1 region towers were selected by the Parties for Phase I.

Bandwidth

[REDACTED FROM FOIA]

Transport

[REDACTED FROM FOIA]

Figure B: Transport Diagram



Distribution

[REDACTED FROM FOIA]

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Exhibit E: Coverage Implementation Plan - Narrative

The deployment plan in King George County has two components: Administration and Construction. Upon the Effective Date, it is anticipated that Contractor shall spend approximately four weeks on the administrative steps necessary to launch the construction phase of the project. Below are the two sections reflected on the project plan with some notes and constraints listed at the bottom.

Administrative

- The Parties will conduct regular check-point meeting with the county administrator and/or a designee of the Authority. This meeting will facilitate communication and provide an informal forum for issue resolution, review of expectations, open discussion, etc.
- **[REDACTED FROM FOIA]**
- Contractor will conduct a Pilot Project during the implementation section of the project timeline that contains some administrative tasks. The pilot project is intended to be conducted to coincide with the launch of the first tower so as to load the primary site with real customer traffic and observe performance. Accurate Auto and Cleydael towers will begin construction as the pilot program is ending. Contractor anticipates working with the Authority to complete pilot program assessment around the same time as construction begins on the second and third towers (named above). Findings and recommendations from the pilot shall be implemented across all active towers, once the pilot is concluded and documented.

Construction

- A 5 week planned cycle is intended for individual tower installation and activation. This timeframe provides Contractor with the ability to review, plan, procure, install, and test. Each tower runs for approximately 48 hours before installs are permitted to conduct spectrum analysis and stress the equipment.
- **[REDACTED FROM FOIA]**
- While the names of the towers are specified in the project timeline, Contractor will have the flexibility to make like-tower swaps in the order of deployment. This is necessary because Contractor has not yet climbed any of the structures and does not yet know what types of mounting, construction, welding, etc will be

necessary on specific sites. Contractor may need to advance a tower in the project plan while special work is undertaken on another site which was scheduled earlier in the plan.

Constraints, Notes, Assumptions

- Access to electrical service – Contractor has a partnership with Northern Neck Electric Cooperative which may help expedite the installation of electrical service to the tower sites for Contractor equipment. Some parts of the King George territory are serviced by other providers with inconsistent lead times for new connections. Contractor cannot govern or impact the speed with which electrical service will be installed by a third party.
- License for microwave backbone – Contractor proposed and intends to secure an FCC permit for a licensed spectrum point-to-point connection. Contractor will use an agency which specializes in the process of securing microwave licenses. The timeframe from start to finish on the license could take as long as 8 weeks. As a contingency, Contractor proposes to simply attach the Network to the Contractor-Westmoreland network in order to get the project started and begin deployment and potentially the pilot study.
- Installation of equipment at facilities – Contractor is working on the assumption that no individual tower or facility operator or existing tower tenant will have an objection to Contractor equipment or access to the facility.

Coverage - Review of structures and Mounting Elevations

Site Name	Required Space	Elevation Proposed (AGL)
King George Middle School	20' vertical space	280 or highest available
Pernia/Accurate Auto	10' vertical space	270-280
Grigsby/Rawland	10' vertical space	210-220
Claeydael	10' vertical space	240 or highest available
Burns	10' vertical space	240 or highest available
DeBernard	10' vertical space	240 or highest available
Monmouth	Top of tank	164
Oakland Park	Top of tank	120
Purkins	Top of tank	120 (estimated)
[REDACTED FROM FOIA]		
[REDACTED FROM FOIA]		

[illegible]

Exhibit E: Coverage and Implementation Plan - Network Acceptance Test Plan

The Network Acceptance Test Plan (“**ATP**”) shall be performed at the completion of the installation on a per hop basis. The ATP procedure is an “out of service” test. This ATP outlines the standards and tests that Contractor shall adhere to. It is suggested that an authorized representative be present during the testing period to witness each of the acceptance action items.

1.1. Antennas, Lines, and Power Plants

Spectrum Analysis shall be performed over the entire operating bandwidth of the UUT (“**Unit Under Test**”). This measurement is performed with the antennas connected to the “**AU**”s (Access unit) and “**SU**”s (Subscriber Unit). The Spectrum Analysis shall quantify the RF noise floor, and indicate the optimum frequencies for operation. Additionally, it shall serve as a confidence test indicating the correct installation and operation of the antennas, lines, and radios.

Antennas for each path shall be aligned as indicated in the network topology map and optimized at the SU for a receive signal level using values displayed during a telnet session with the UUT. Results shall be recorded for each link, as an “**SNR**” (Signal to Noise Ratio) and “**AM**” (Amplitude Modulation Level) if using 5GHz OFDM, or “**RSSI**” (Relative Signal Strength Indicator) if using 900MHz GFSK FHSS.

“Out of service” means the UUT is in test/calibration mode, not in operational mode. For example, the UUT cannot perform Spectrum Analysis and simultaneously pass user traffic.

Coverage criteria means a 900Mhz signal of ‘-74dBm’ at 24’ above terrain level using a 17dbi antenna and a coaxial jumper cable between the antenna and customer premise radio modem.

1.2 System DC Power

Contractor shall install “UPS”s (Uninterruptible Power Supply) at all AUs. UPS operations shall be tested to demonstrate real-time fail-over and run-time duration. Voltage shall be measured and confirmed to be within manufacturers specifications. On installed chargers, the Float Voltage shall be set to the battery manufacturer's specification. In the case of wet cells, the Equalized Voltage shall be set according to the manufacturers specifications and the batteries shall be equalized one time (if required) at installation. If applicable, the High Volt Alarm, Low Volt Alarm and Low Volt Disconnect shall be set per charger manufacturer's specification. Alvarion equipment is 110v AC power. Supply of power shall be by industry standard power management practices and battery backup shall meet equipment requirements.

“Run-time” means 4 hours.

The AU does specify the high/low/ alarm and cutoff of any DC charger/inverter power system. Hi/Low alarm/cutoff voltage is specified by inverter/charger and or battery type.

1.3 System Grounding

System Grounding shall meet all manufacturer's specification and OSHA specifications. Alvarion’s whitepaper on grounding specifications shall be followed.

2.1 Radio Tests

This section describes how to ascertain the SNR on a particular RF link. All radio equipment is menu driven via telnet connection to the unit. Test description will be defined as keystrokes necessary to arrive at the desired display. User entered keystrokes are italicized and underlined, for example “*1 2*” instructs the operator to enter the “1” key, followed by the “2” key. The escape key is represented as *<esc>*.

[REDACTED FROM FOIA]

2.3 IP Data Throughput Tests

For all links, the IP data throughput shall not exceed the MIR as defined in the SU. Iperf is the tool of choice to perform throughput testing. This tool is used to measure maximum TCP bandwidth, allowing the tuning of various parameters and UDP characteristics. Iperf reports bandwidth, delay jitter, datagram loss. Various free websites also will report perceived throughput, but are inherently unreliable and their results should be view with that in mind.

2.3 Power Supply Measurements

Measure and record the electric power at test points on the front edge UPS power supplies utilizing a DMM. Acceptable value shall be between 12.5 and 14.5 volts.

3 Remedies

If there is a failure to meet specifications on any of the items in the ATP and the fault may not be immediately remedied, the exception shall be noted and the test continued. The scope of a re-test shall be initially proposed by the Contractor and shall be subject to approval by the Authority. A re-test of the item for the purpose of clearing the exception shall be witnessed by a representative of the Authority within a twenty-four (24) hour period, upon remedy of the fault. An appropriate level of regression testing will be performed when indicated but any test is a stand-alone event.

4 Pilot and Final Network Acceptance

Exhibit E: Network Acceptance Test Plan

For both the Pilot and the Final Network Acceptance, all test equipment real time results shall be witnessed by an Authority representative and recorded onto the final page of the ATP. Final Network Acceptance shall not be final until agreed to and signed and dated by the appropriate representative of the Authority. Printed results and copies of all recorded field data shall be provided by the Contractor to the Authority.

In order to confirm the coverage required under the terms of the Agreement, Contractor shall confirm the signal strength transmitted by the Equipment in each installed tower in the Coverage Area. Tests required herein shall be performed to the Authority's reasonable satisfaction. Contractor may provide the Authority with the results of service verification tests for individual Subscriber Units in any specific tower footprint as satisfactory evidence of the radial coverage requirements being met throughout the radial area up to the distance such Subscriber Unit is from such tower. For radial areas within the footprint of any particular tower, but that are farther out from the tower than such service verified Subscriber Units, Contractor shall verify the signal strength of such radial areas by measuring the signal strength at the outer edge of such tower footprint.

For the Pilot, prior to deployment, Contractor shall provide a detailed map of projected coverage from towers being deployed, and shall provide Authority with testing results upon completion of the Pilot deployment.

Prior to the Effective Date, Contractor shall provide the Authority with a general coverage map, or propagation study, designating the location all proposed tower facilities, including projected coverage, for the entire Phase 1 deployment, such map to be attached hereto. This map shall be updated on a periodic basis to show the progress of actual deployment, and the resulting coverage.

Definition of Terms & Acronyms:

Alvarion – Broadband wireless systems manufacturer.

AM -Amplitude Modulation

AU - Access Unit. (radio)

DMM – Digital Multimeter

FHSS – Frequency Hopping Spread Spectrum.

GFSK - Gaussian Frequency Shift Keying

MIR – Maximum Information Rate

OFDM - Orthogonal Frequency Division Multiplexing.

RSSI - Received Signal Strength Indication.

RTx – Re-Transmit

Rx - Receive

SU - Subscriber Unit. (radio)

SNR - Signal to Noise Ratio. The level of a desired signal to the level of background noise.

Tx - Transmit

UPS - Uninterruptible Power Supply

Exhibit E: Network Acceptance Test Plan

Page 7 of 8

UUT - Unit Under Test.

Table 1:

For 900 MHz reference:

RSSI to dBm Conversion

RSSI dBm RSSI dBm

26 -100 81 -64

27 -99 82 -63

29 -98 83 -62

30 -97 84 -61

32 -96 85 -60

33 -95 86 -59

35 -94 88 -58

36 -93 89 -57

38 -92 90 -56

39 -91 91 -55

41 -90 92 -54

42 -89 93 -53

44 -88 94 -52

45 -87 96 -51

47 -86 97 -50

48 -85 98 -49

50 -84 99 -48

51 -83 100 -47

53 -82 101 -46

54 -81 102 -45

56 -80 103 -44

57 -79 104 -43

59 -78 105 -42

60 -77 106 -41

62 -76 107 -40

63 -75 108 -39

65 -74 110 -38

66 -73 111 -37

68 -72 112 -36

69 -71 113 -35

71 -70 114 -34

72 -69 115 -33

74 -68 116 -32

75 -67 118 -31

77 -66 119 -30

78 -65

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Exhibit F: Service Levels

1. Definitions. Defined terms used in this Exhibit but not otherwise defined shall have the meanings ascribed to them in the Agreement. For the purposes of this Exhibit, the following terms shall have the following meanings:

- 1.1 Wireless Broadband Access Services or Access Services means the Service provided over the Wireless Service.
- 1.2 Priority 1 Outage means a complete outage of Access Services due to Contractor's "Network Unavailability."
- 1.3 Network (or Contractor Network) means the combination of Contractor operated equipment, network elements, and circuitry that provide the Access Services. The Network begins with the Contractor Core Router, and ends at the Contractor provided CPE installed at the Subscriber's Premise. The Network does not include any COE, any equipment not provided by Contractor, and any networks or network equipment not owned or controlled by Contractor, including without limitation, equipment or facilities owned or controlled by telecommunications providers.
- 1.4 Mean-Time-To-Repair ("MTTR") means the period of time it takes Contractor to resolve a Priority 1 Outage, which is the average of the sum of minutes during which the Authority's Priority 1 Trouble Tickets were open in a billing month or reporting period. The outage period is calculated from the time Contractor opens a Priority 1 Trouble Ticket for the Authority until the time the Priority 1 Outage is resolved, and the Authority is reasonably satisfied that the Priority 1 Outage has been resolved. The Authority's satisfaction that the Priority 1 Trouble Ticket has been resolved shall not be unreasonably withheld.
- 1.5 Network Latency means the average time it takes an IP packet to enter and exit the Contractor Network.
- 1.6 Packet Loss means the average percentage of data packets transmitted between the Subscriber's Contractor-provided SU and the nearest Contractor test server that are not successfully delivered and the nearest Contractor gateway device where IP packets are transitioned from Contractor facilities to other telco facilities.
- 1.7 Network Unavailability means an outage of the Access Services due to failure of the Contractor Network resulting in the Subscriber being unable to connect to the Contractor Core Router from the Subscriber's SU. "Unavailability" shall not include the unavailability of the Access Services resulting from:

(a) Routine Network maintenance;

- (b) Emergency maintenance;
- (c) Circuits or network elements provided by other telecommunications providers or other common carriers;
- (d) An external Internet Service Provider or an Internet exchange point;
- (e) Acts or omissions of the Authority or any Subscriber;
- (f) Any equipment, hardware, software, facilities or applications not provided by Contractor, including without limitation, COE;
- (g) One time unavailability periods of less than fifteen (15) minutes (for the removal of doubt, repeated unavailability periods of less than fifteen (15) minutes shall be included in Unavailability); or
- (h) Acts of God, civil disorder, natural disaster, terrorism, radio frequency interference or blockage or other occurrences beyond the reasonable control of Contractor.

1.8 RESERVED.

1.9 CPE means the Contractor provided and owned Subscriber Premise Equipment installed at the Subscriber's Premise for the purpose of receiving the Access Services.

2.0 COE means Customer (aka Subscriber) Owned Equipment that is provided and/or installed by the Subscriber for the purpose of receiving the Access Services.

2.1 SU means the Subscriber Unit which is one portion of the Subscriber's CPE package installed by Contractor.

2.2 Trouble Ticket means a Contractor generated document officially acknowledging a Subscriber's Notification of Network Unavailability.

2.3 Subscriber's Notification means the Subscriber has contacted Contractor by one of the following methods; telephone call to Contractor's Customer Support (877-299-8222, 540-829-1700), or by email to support@vabb.com or any general or current Contractor staff email address.

2.4 Business Hours means Monday through Friday, 8:00am to 5:00pm, exclusive of holiday's observed by County.

2. Network Availability. Contractor shall use commercially reasonable efforts to ensure that the Contractor Network shall be available 99% of the time or greater. Conversely, Network Unavailability shall be determined by Contractor, and shall be based on the number of minutes that the Contractor Network was confirmed by Contractor to be Unavailable during the preceding calendar month. Minutes are counted from the time a Subscriber's Notification

reporting Network Unavailability is received by Contractor until such time as Network Availability is fully restored.

3. Network Latency. Contractor shall use commercially reasonable efforts to ensure that, during the Initial Term and each Renewal Term, the Contractor Network has an average round trip packet transit time of 100ms or less between the SU to the Contractor test server.

4. Packet Loss. Contractor shall use commercially reasonable efforts to ensure that, during the Initial Term and each Renewal Term, Packet Loss on the Network shall not exceed five percent (5%) during a calendar month.

5. Repair Response. Contractor shall use commercially reasonable efforts to ensure that, during the Initial Term and each Renewal Term, MTTR criteria shall be as follows;

- 5.1 For all Contractor Network components up to but not including the Subscriber's CPE, response time shall be within the times set forth below from the time Contractor acknowledges the Network Unavailability by means of Network Monitoring tools and/or a Subscriber's Notification, until Network Availability is restored: 2-4 hour telephone callback and pager support from 7am to 10pm daily, including weekends, plus onsite response within 36 hours.
- 5.2 For Contractor provided CPE components, response time shall be within 72 business hours from the time Contractor acknowledges the Network Unavailability for that particular Subscriber by means of a Subscriber's Notification from that Subscriber or their Authorized Representative, until Network Availability is restored.
- 5.3 Contractor reserves the right to extend the above referenced Repair Response times in sections 5.1 and 5.2 when weather conditions pose a threat to the life or limb of a Contractor Field Technician or a Contractor contractor.
- 5.4 Exclusions. MTTR measurements shall exclude the following:
 - (a) Trouble Tickets for complete Subscriber outages within 3 business days of a new installation and routine Trouble Tickets (ie, all other Trouble Tickets other than for complete Subscriber outages) generated within 7 business days of a new installation;
 - (b) Trouble Tickets that are not associated with the Access Services;
 - (c) Trouble Tickets opened by the Authority for circuit monitoring purposes only;
 - (d) Trouble Tickets associated with any act or omission on the part of the Authority, any Subscriber, or any third party;

- (e) Force majeure or other events beyond the reasonable control of Contractor (e.g. acts of God, government regulation, acts of terrorism, national emergency, etc.)
- (f) “Hold Time” during a “Pending Customer Action” status, provided the Trouble Ticket is subsequently closed without further action. A “Pending Customer Action” situation exists where the Authority is not immediately available for verification and concurrence on Trouble Ticket closure. In such event, Contractor shall log a “Pending Customer Action” on the Trouble Ticket until the Authority can either be contacted or no further problem exists. If there are no further problems, Contractor shall close the Trouble Ticket and notify the Authority that the Trouble Ticket has been closed.
- (g) Trouble Tickets associated with any equipment, materials, facilities, hardware, software, or applications not provided by Contractor, including without limitation, COE.

6. Access Services - Speed Expectations. Contractor shall use commercially reasonable efforts to ensure that the data transfer speeds are maintained in accordance to the Subscriber’s agreement. Authority acknowledges that factors beyond Contractor’s control may affect Access Services speeds; i.e. COE, Internet traffic beyond the Contractor Network, heavy foliage, and including without limitation, RF Interference.

6.1 Upon Subscriber Notification of “perceived” or otherwise “tested” slow speeds not within the range of the Subscriber’s agreement, Contractor reserves the right to require the customer to show evidence of slow speeds via Subscriber Notification, upon which Contractor will take corrective action to mitigate the occurrence by means of standard Contractor Network adjustments, or by visiting the Subscriber’s premise to inspect the CPE.

6.1.1 Upon visiting the Subscriber’s premise, if it is conclusively determined that the Subscriber is receiving the Agreement speeds, Contractor reserves the right to charge the customer a set hourly rate for the visit.

6.1.2 Upon visiting the Subscriber’s premise, if it is conclusively determined that the Access Services cannot be improved and slow speeds is the result of insufficient Access Services signal to the CPE, Contractor will offer the Subscriber 2 options;

- (a) Cancel the Access Services, de-install all Contractor CPE, and determine compensation when applicable.

- (b) Subscriber “accepts as is” and signs a waiver absolving Contractor of Access Services speeds dictated by the Agreement. Contractor will then place the Subscriber’s account on a list to be revisited at no cost to the Subscriber once a new Contractor Access Services Broadcaster is deployed and available to said Subscriber.

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Exhibit G: Network Acceptable Use Policy

VIRGINIA BROADBAND, L.L.C. (VABB)

This Acceptable Use Policy (this “Policy”), as may be amended from time to time, describes specific actions that are prohibited by VABB and applies to all Users of any part of the Services, without exception. Defined terms used in this Acceptable Use Policy, but not otherwise defined, shall have the meanings ascribed thereto in the Terms and Conditions of the Customer’s Agreement with VABB. The term “Users” means the Customer, Authorized Users, Consumers and any other person who uses the Services, regardless of whether such use is permitted by VABB and/or the Customer. VABB reserves the right to modify the terms of this Policy at any time and from time to time. The then current version of this Policy will be posted on VABB’s website at www.vabb.com.

Users shall not use the Equipment or the Services:

- To monitor data on any network or system without the prior explicit authorization of the administrator of that system or network.
- To interfere with the service of any user, host or network, including deliberate attempts to overload a server, network connected device or network component.
- To send unsolicited, mass electronic mail messages to one or more recipients or systems (“Spamming”). Any electronic messages, which are sent in an unsolicited manner to ten (10) or more recipients, or any series of unsolicited electronic messages to a single user, qualifies as Spamming.
- For illegal purposes or to further illegal activities, including without limitation, uploading, downloading, posting, distributing or facilitating the distribution of any material in any chat room, message board, newsgroup or similar interactive medium that:
 1. constitutes an unauthorized reproduction or display of copyrighted or other protected materials, or otherwise violates copyright or intellectual property laws;
 2. violates U.S. export control laws;
 3. is threatening, abusive, harassing, obscene, defamatory, libelous, deceptive, fraudulent or invasive of another’s privacy;
 4. encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation.
- To transmit any material or data in violation of federal, state or local law or regulation, including, but not limited to any copyrighted material or data, or material or data protected by trade secret or trademark laws.
- To probe hosts or networks without the prior explicit authorization of the administrator of those systems.

- To breach the security of a host, network component or authentication system without the prior explicit authorization of the administrator of those systems.
- To originate malformed data or network traffic that results in damage to, or disruption of, a service or network connected device.
- To forge data with the intent to misrepresent the origination user or source.
- To forge electronic mail headers (including any portion of the IP packet header and/or electronic mail address), or any other method used to forge, disguise, or conceal the user's identity when using the Services ("Spoofing").
- To use another Internet user's electronic mail server to relay electronic mail without the prior explicit authorization from that third party ("E-mail Relay").
- To conceal, forge or otherwise falsify User's identity in connection with any Services, or present a false identity to VABB when signing up for any Services.
- To cross-post the same or similar messages to two or more USENET newsgroups or to post messages which are off-topic to the particular newsgroup. All postings to USENET newsgroups by User must comply with that newsgroup's charter and other policies.

VIRGINIA BROADBAND, L.L.C.

This VoIP Services Addendum (this "Addendum") is entered into by and between VABB and Customer as part of the Wireless Broadband Access Services Agreement (the "Agreement") by and between VABB and Customer. Defined terms used, but not otherwise defined in, this Addendum shall have the meanings ascribed to them in the Terms and Conditions of the Agreement. Customer agrees to the following additional terms and conditions with respect to its/his/her use of VoIP bundled services (the "VoIP Services") and any related devices provided by VABB, such as an IP phone, multimedia terminal adapter, analog telephone adapter or any other IP connection device, ("VoIP Equipment"):

1. Incorporation of Terms and Conditions. In addition to the provisions of Sections 2-14 of this Addendum, the provisions of the Policy and of Sections 4-7, and 9-22 of the Terms and Conditions shall apply to the VoIP Services, the VoIP Equipment, and Customer's use thereof, as if fully set forth herein, except that references therein to the "Services," the "Equipment," and a "User" shall be deemed to refer to the "VoIP Services," the "VoIP Equipment," and a "VoIP User" respectively. Nothing in this Addendum shall be construed to modify or limit any of the provisions of the Terms and Conditions, or the application thereof to the Services, the Equipment, and/or Customer or any User's use thereof.

2. Use of the VoIP Services. If Customer is a residential customer, the VoIP Services and the VoIP Equipment are to be used for personal use only, and Customer agrees not to use the VoIP Services and/or VoIP Equipment for any business use including without limitation, auto-dialing, continuous or extensive call forwarding, continuous connectivity, fax broadcasting, fax blasting, telemarketing (including without limitation charitable or political solicitation or polling), automatic dialing, call centers, public calling centers or

Internet cafes or any other activity that would be inconsistent with normal residential or small business usage patterns. Any use in excess of 5,000 minutes per month shall be presumed to be inconsistent with the uses permitted herein. If Customer is a business customer, only Customer's employees or authorized contractors who work at the Premises may use the VoIP Services, provided, however that the number of such users shall not exceed the maximum number of Authorized Users of the Services. Both business and residential Customers are prohibited from reselling or transferring the VoIP Services or the VoIP Equipment to any other person or entity for any purpose, or charging for the use of the VoIP Services. VABB may immediately terminate or modify Customer's right to use the VoIP Services, if VABB determines, in its sole discretion, that Customer is using the VoIP Services in violation of the terms of this Addendum, including without limitation, the provisions of this Section 2.

3. Use By Others. In addition to all other provisions set forth in this Addendum, the Terms and Conditions, and the Policy, Customer agrees to use the VoIP Services and VoIP Equipment solely for lawful purposes and that he/she/it shall not use the VoIP Services or VoIP Equipment for transmitting or receiving any communication or material of any kind if, in VABB's sole judgment, the transmission, receipt or possession of such communication or material may constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law. VABB reserves the right to terminate the VoIP Services immediately if VABB, in its sole discretion, believes that Customer has violated the provisions of this Section 3. Customer is liable for any and all use of the VoIP Services and/or VoIP Equipment by the Customer and any other person using the VoIP Services and/or VoIP Equipment (each person, a "VoIP User"), even if such person was not authorized by Customer to use the VoIP Services or the VoIP Equipment. Customer agrees to, and shall, indemnify and hold VABB harmless from and against any and all liability and loss suffered or incurred by VABB arising out of, or in connection with, any use by Customer or any VoIP User of the VoIP Services and/or the VoIP Equipment. Customer acknowledges and agrees that VABB may forward any material used in connection with the VoIP Services or the VoIP Equipment, together with Customer's communications with VABB and Customer's personally identifiable information, to the appropriate authorities for investigation and prosecution.

4 Tampering with the VoIP Services and the VoIP Equipment. Customer agrees not to change the electronic serial number or equipment identifier of the VoIP Equipment, or to perform a factory reset of the VoIP Equipment. VABB reserves the right to immediately terminate the VoIP Services without refund if Customer or any person acting on behalf of Customer tampers with any of the VoIP Equipment.

5. Theft of VoIP Services. Customer agrees to notify VABB immediately if Customer becomes aware at any time that the VoIP Services are being stolen or fraudulently used. In connection with such notification, Customer agrees to provide his/her/its account number and a detailed description of the circumstances giving rise to the alleged theft or fraud. Customer shall be solely responsible for all charges for the use of the VoIP

Services until Customer provides VABB with notice of any theft or fraudulent use of the VoIP Services.

6. Account Number and Password. Customer is responsible for maintaining the confidentiality of Customer's account number and/or password, and is solely responsible for all activity in connection with such account by any VoIP User, regardless of whether such activity was actually or expressly authorized by Customer.

7. Reassignment of Number upon Termination of VoIP Services. Upon termination of the VoIP Services for any reason whatsoever, VABB may, in its sole discretion, reassign to any other person or entity a telephone number or Direct Inward Dialing number ("DID") (collectively "Number") provided to Customer by VABB in connection with VABB's provision of the VABB Services. Customer expressly acknowledges and agrees that Customer shall not obtain any rights, title or interest in any Number. A Number shall not be used with any other device or equipment other than the VoIP Equipment. VABB reserves the right, in its sole discretion, to change, cancel or reassign any Number at any time.

8. VoIP Services Distinctions. Customer acknowledges and agrees that the VoIP Services are not telephone services. Important distinctions exist between telephone service and the VoIP Services. The VoIP Services are subject to different regulatory treatment than telephone service. This treatment may limit or otherwise affect Customer's rights of redress before any governmental telecommunications regulatory agencies.

9. Ownership and Risk of Loss. All equipment remains the property of VABB. If Customer purchases the VoIP Equipment from VABB, the Customer becomes the owner of the Equipment and bears all risk of loss of, theft of, casualty to or damage to the VoIP Equipment.

10. Intellectual Property. If the Customer decides to use the VoIP Services through an interface device not provided by VABB, which VABB reserves the right to prohibit in particular cases or generally, Customer warrants and represents to VABB that Customer possess all required rights, including software and/or firmware licenses, to use such interface device with the VOIP Services. Customer agrees to, and shall, indemnify and hold VABB harmless from and against any and all loss suffered or incurred by VABB arising out, or in connection with, Customer or any VoIP's User's use of such interface device with the VoIP Services.

11. EMERGENCY (911) OR DIRECTORY ASSISTANCE SERVICES. VABB provides Emergency 911 and directory assistance services through a third party contractor and assumes no liability for these services. Under no circumstances shall VABB be liable to Customer or any party for any claim, damage, or loss arising from the inability to contact emergency services using the VoIP Services and/or the VoIP Equipment. Customer forever releases and discharges VABB from and against any and

all liability and loss arising out of, or relating to Customer or any User's inability to contact emergency services using the VoIP Services and/or the VoIP Equipment.

12. Power and/or Broadband Service Outages. Customer acknowledges and agrees that the VoIP Services will not function in the event of a power failure at Customer's location or premises where the VoIP Services are being used. A power failure or disruption may require Customer to reset or reconfigure VoIP Equipment prior to using the VoIP Services. Customer further acknowledges and agrees that the VoIP Services require a fully functional broadband connection to the Internet and that in the event of an outage of, or termination of service with or by, Customer's Internet service provider ("ISP") and/or broadband provider, the VoIP Services will not function. Customer shall continue to be billed for the VoIP Services unless and until Customer and/or VABB terminates the VoIP Services in accordance with the terms of the Agreement

13. Billing.

13.1 Billing – Unlimited Monthly Usage. VOIP services are generally billed based on the prevailing calling plan(s).

13.2 Billing – Usage Basis. In those instances where an arrangement is made for billing based on usage, call times for each call made using the VoIP Services are rounded up to the next whole minute and, if applicable, billed in full minute increments. Per call charges are rounded up to the next whole penny. All calls for which VABB receives answer supervision shall incur a minimum one-minute charge. VABB relies on answer supervision to determine whether and when a call has been answered. Answer supervision is a signal sent by the carrier connecting the call to indicate the start of call. Answer supervision is generally received when a call is answered; however, answer supervision may also be generated by voicemail systems, private branch exchanges, and inter-exchange switching equipment. Where no answer supervision is received, VABB shall commence billing forty (40) seconds following dial time unless the caller has terminated the call.

13.3 Billing Disputes. Customer must notify VABB in writing within seven (7) days after Customer's receipt of such invoice if Customer disputes any Fees or charges relating to the VoIP Services set forth on any invoice provided by VABB. Customer's failure to dispute such Fees or charges within such seven (7) day period shall constitute a complete waiver of the dispute.

13.4 Taxes. Customer is solely responsible for payment of any and all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of Customer's subscription, use of, or payment for the VoIP Services or the VoIP Equipment. Such amounts are in addition to payment for the VoIP Services or the VoIP Equipment pursuant to the Agreement. If Customer is exempt from payment of such taxes, Customer shall provide VABB with an original

certificate that satisfies applicable legal requirement attesting to tax-exempt status. Tax exemption shall only apply from and after the date VABB receives such certificate.

14. Changes. VABB may, in its sole discretion, modify or amend the terms of this Addendum from time to time. VABB shall notify Customer of any such changes by posting a notice of such changes at www.getvabb.com or by notice via e-mail or postal mail. Customer shall have, at that time, an opportunity to terminate its use of the VoIP Services and the VoIP Equipment. Customer or any VoIP User's continued use of the VoIP Services following receipt of such notice shall irrevocably constitute acceptance of all of such changes.

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Exhibit H: Operating frequencies, antennae configuration and other information necessary to avoid Radio Frequency Interference

[REDACTED FROM FOIA]

II. County agencies:

The Agreement shall govern all aspects of the Network, Service and any RF Interference regardless as to this section not containing frequency information.

III. Tenants or lessees of Public Facilities:

The Agreement shall govern all aspects of the Network, Service and any RF Interference regardless as to this section not containing frequency information.